159 US 651

TRANSCRIPT OF RECORD.

159-651

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 732.

LAWRENCE P. MILLS, APPELLANT,

vs.

W. BRIGGS GREEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED SEPTEMBER 19, 1895.

(16,022.)

(16,022.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 732.

LAWRENCE P. MILLS, APPELLANT,

vs.

W. BRIGGS GREEN.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from United States circuit court, district of South Carolina	*b*	1
Bill of complaint	1	3
Restraining order and rule to show cause	11	13
Subpœna	12	14
Marshal's return	13	15
Return to rule to show cause	14	16
Order modifying restraining order	19	21
Opinion of Judge Goff	20	22
Order continuing injunction	39	41
Petition for appeal and allowance of same	40	42
Assignment of errors	41	43
Appeal bond	42	44
Citation	43	45
Clerk's certificate	44	46

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1895.

	Original.	Print.
Motion to docket and advance argued and granted	45	47
Notice of motion to dismiss appeal	45	47
Motion to dismiss appeal	46	47
Hearing and submission	46	48
Opinion	46	48
Final decree	48	49
Mandate	49	50
Petition for appeal	51	52
Assignment of errors	54	52
Appeal bond	55	53
Clerk's certificate	57	54
Citation	58	55
Proof of service of citation	60	55

a UNITED STATES OF AMERICA, *To wit:*

At a United States circuit court of appeals for the fourth circuit, begun and held at the court-house, in the city of Richmond, on the fourth Tuesday of May, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and ninety-five—present, Honorable Nathan Goff, circuit judge; Honorable Charles H. Simonton, circuit judge; Honorable Robert W. Hughes, district judge—among other were the following proceedings, to wit:

W. BRIGGS GREEN, Appellant,
vs.
LAWRENCE P. MILLS, Appellee

Transcript of record from the circuit court of the United States for the district of South Carolina was transmitted to and filed in the said circuit court of appeals here on the 28th day of May, 1895; which said transcript of record is as follows, to wit:

b *Transcript of Record.*

United States Circuit Court of Appeals for the Fourth Circuit.

LAWRENCE P. MILLS, Complainant, Appellee,
versus
W. BRIGGS GREEN, Defendant, Appellant.

Appeal from interlocutory orders or decrees of the Hon. Nathan Goff, U. S. circuit judge (fourth circuit, district of South Carolina), granting and continuing an injunction.

Record filed May 28, 1895.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Richmond, Va.

BILL OF COMPLAINT.

(FILED 19TH APRIL 1895.)

UNITED STATES OF AMERICA FOURTH CIRCUIT SOUTH CAROLINA DISTRICT	IN THE CIRCUIT COURT. IN EQUITY
LAWRENCE P. MILLS *vs.* W. BRIGGS GREEN	BILL FOR INJUNCTION

To the Judges of the Circuit Court of the United States for the District of South Carolina:

Lawrence P. Mills, a citizen of the State of South Carolina and of the United States, brings this, his bill, against W. Briggs Green, a citizen of the said State and United States: and thereupon your orator complains and says:

1. That this bill is exhibited on behalf of your orator and of all other citizens of the County of Richland, in the State of South Carolina and United States aforesaid, circumstanced like your orator in this behalf and who are too numerous to be made parties hereto.

2. That your operator was 26 years of age on the 4th day of February, 1895; that he is a resident of the Ward 4 precinct of Columbia, in the County of Richland, in the State of South Carolina; that he is a male citizen of the United States; that he has resided in the State of South Carolina more than one year preceding the last general election, and he has

resided in the said County of Richland for more than sixty days prior to said general election.

3. That your orator is an elector of the said State of South Carolina, posessing all the qualifications of an elector of the most numerous branch of the State Legislature, provided by the Constitution of the said State, and that he is subject to none of the disqualifications set forth in the said Constitution, and that he is under the Constitution and laws of the United States duly qualified to vote at all Federal and State elections held in the said Ward 4 precinct of Richland County, in the State of South Carolina.

4. That in a Section known as Section 90 of the General Statutes of South Carolina of 1882 is set forth the following: "All electors of the State shall be registered as hereinafter provided; and no person shall be allowed to vote at any election hereafter to be held unless registered as hereinafter required;" and that Section 132 of the Revised Statutes of South Carolina of 1893 is to the same effect and in the following words: "All electors of this State shall be registered and no person shall be allowed to vote at any election thereafter to be held unless he shall have heretofore registered in conformity with the requirements of Chapter 7 of the General Statutes of 1882 and Acts amendatory thereof, or shall be registered as herein required."

5. That by a Section known as Section 94 of the said General Statutes of 1882 it is provided: "When the said registration (in certain books to be provided him and made in the manner provided for in Section 93) shall have been completed the books shall be closed and not reopened for registration except for the purposes and as hereinafter mentioned till after the general election for State officers. After the said next general election the books shall be opened for the registration of such persons as shall thereafter become entitled to register on the first Monday in each month, to and until the first Monday in July, inclusive, preceding the following general election, upon which last named day the same shall be closed and

not reopened for registration until after the said general election, and ever after the said books shall be opened for the registration of such electors, and on the days above mentioned, until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place;" and in Section 137 of the said Revised Statutes of 1893 it is provided: "After every general election the registration books shall be opened for registration of such persons as shall thereafter become entitled to register on the first Monday in each month until the first day of July preceding a general election, when the same shall be closed until such election shall have taken place."

6. That the section known as Section 97 of the said General Statutes of 1882 is in the following words: "Any person coming of age and becoming qualified as an elector may appear before the supervisor of registration on any day on which the books are opened as aforesaid and take oath as to his age and qualification, as hereinbefore provided, and if the supervisor find him qualified he shall enter his name upon the registration book of the precinct wherein he resides."

7. And your orator further alleges that in and by the requirements of said registration enactments of the Government of the State of South Carolina it is provided that the respective supervisors of registration in the several counties shall issue to the voter when registered a certificate of registration, and that said voter shall present the same at the polls to the managers of election, and that no one shall be allowed to vote at any election to be held in the said State unless his certificate of registration as aforesaid is exhibited at the time and in the manner aforesaid.

And it is further required in and by the said alleged enactments that in case a voter or elector shall remove from one county to another in said State, or from one precinct to another in the same county, or from one residence to another in the same precinct, that he shall obtain a transfer and a renewal certificate.

And it is further provided in said enactments that in the event an elector shall lose his said certificate of registration he must obtain a renewal thereof upon furnishing evidence satisfactory to the registrar of the said county wherein he resides that his said certificate has been mislaid or lost, and that the same has not been wilfully or intentionally disposed of.

Your orator further alleges that by the provisions and requirements of said enactments the elector failing for any reason to comply with any of the provisions aforesaid is denied the right of suffrage both in Federal and State elections.

And your orator further alleges that the provisions of the said enactments fixing the time for registration and the closing of the books for that purpose on the 1st day of July preceding every election, and the many and divers provisions, requirements and conditions set out in the various and sundry sections of said alleged Act, were intended and that they in effect do abridge, impede and destroy the suffrage of the citizen both of the State and of the United States.

8. And your orator further avers that on the 24th day of December, 1894, an alleged Act was passed by the Government of the State of South Carolina entitled: "An Act to provide for calling a Constitutional Convention, to provide the numbers and qualifications of members of the Convention, their compensation, etc., and to provide for the election of the same and to define and prescribe the qualifications of the electors and the manner of the election and of declaring the result." That by section 4 of the said Act it is declared who shall be entitled to vote for delegates to the said Constitutional Convention; and in addition to the qualifications prescribed for electors by the Constitution of the State of South Carolina is provided a further qualification, to wit: That the elector be "duly registered as now required by law, or who, having been entitled to register as a voter at the time of the general registration of electors in the State which took place in the year of our Lord 1882, or at any time subsequent thereto, failed to register at such time required by law, or who has become a citizen of this State and who shall register as hereinafter provided in such cases."

And your orator further avers that by Section 6 of the last mentioned Act it is provided: "That on the first Monday of March, in the year of our Lord, 1895, the supervisor of registration of each county shall, at the County seat thereof, open his books of registration, and shall hold the same open for ten consecutive calendar days thereafter, except Sundays, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, except Charleston, Beaufort and Richland Counties where the said books shall be kept open from 10 o'clock in the forenoon to 6 o'clock in the afternoon, during which time any elector then or theretofore at any time entitled to register as a qualified voter, or who has become a citizen of this State shall be, during the time herein fixed by law for registration, entitled to register as such, as hereinafter provided; and any elector having been heretofore duly registered, or having since changed his residence, or having lost his certificate, shall be entitled to have the same transferred or renewed, as now provided by law."

And your orator further avers that by Section 7 of the last named Act it is provided: "Any elector who shall have been entitled to register at the general registration in the year of our Lord, 1882, or at any time subsequent thereto, and who failed to register at such time as required by law, and who shall make application under oath in accordance with the printed form to be prepared by the Attorney General, setting forth in each case the fact, to wit: the full name, age, occupation and residence of the applicant at the time of the said general registration, or at any time thereafter, when the said applicant became entitled to register, and the place or places of his residence since the time he became entitled to register, which affidavit shall be supported by the affidavits of two reputable citizens who were each of the age of 21 years on the 13th day of June, A. D. 1882, or at the time the said applicant became entitled thereafter to register, or any elector who has become a citizen of this State, by moving into the same and his place of residence since living in the State and who shall make application under oath, stating the time of his moving into the State and his place of residence since living in the State, which application shall be

supported by the affidavit of two reputable citizens, who were 21 years of age at the time the applicant became a resident of this State, such applicant shall be allowed to register as a voter and to have issued to him a certificate as a duly qualified elector in the manner and form now provided by law, and be entitled to vote at said election for delegates to said Convention." And your orator avers, and he so charges, that the time allowed in Section 6 of the Act last named is unreasonably short for the purpose for which it purports to be intended—and that the provisions of Section 8 are burdensome and harassing to the electors, and are unreasonable and unnecessary—and the same so limit, abridge and qualify the privilege of registration that they result in a practical denial of the right to vote to those electors who, by the operation of the unconstitional provisions of the General Statutes of 1892 and Revised Statutes of 1893, are now unregistered.

And your orator further avers, that the sections above quoted from and referred to, as contained in said General Statutes of 1882 and Revised Statutes of 1893 and Acts of 1894, are so interwoven with, and are such integral parts of the whole alleged registration laws of the State of South Carolina, that if the same be declared unconstitutional and void, as herein prayed, the whole enactments in regard to registration are likewise void.

That your orator is advised, and he so charges, that all of the sections hereinbefore quoted from and referred to, as contained in the General Statutes of 1882 and Revised Statutes of 1893 and the Act of 1894, are in violation of Section 31 of Article 1, Section 2 of Article 8, and Section 8 of Article 8, and divers other Sections of the Constitution of the State of South Carolina, in this, that they add to the qualifications of electors provided for in the said Constitution, a further qualification not therein provided, to wit: registration as required by the several Sections of Chapter 7, Title 2 of Part 1 of said General Statutes of 1882, also known as Chapter 8 of Title 2 of Part 1 of the Revised Statutes of South Carolina of 1893, and as also required by Sections 4, 5 6, 7 and 8 of the aforesaid

Act of 1894, and in this, that they add to the causes authorizing the Legislature of said State to deprive the citizens thereof of the right of suffrage, a clause not contained in said Constitution, to wit: a failure to be possessed at the time of election of a certificate of registration, although then duly registered upon the books of registration; and in this, that the several supervisors of registration of said State are directed to open their registration books after each general election for the registration *only* of those citizens coming of age and becoming qualified as electors since such general election, and to close said books and to keep them closed as to all other classes of unregistered electors, with no provision in the said unconstitutional registration laws, except the ten days provided for in the Act of 1894, for the registration of those who coming of age and becoming qualified to vote after the general election of 1882; or the general election of 1884; or the general election of 1886; or the general election of 1888; or the general election of 1890; or the general election of 1892, fail to register at the time provided in the said law for the registration of such voters; that in so much as no person shall be allowed to vote unless registered as provided by the aforesaid laws, and in so much as none of the said laws provide for the registration of those voters who failed to register at the registration made next succeeding their coming of age and becoming qualified as electors, excepting within the aforesaid ten days, said registration laws do deprive all such voters of their right of suffrage, and all such voters are permanently disfranchised in plain violation of their constitutional rights.

9. That by Section 2 of Article 1 of the Constitution of the United States it is provided that the Federal "electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." That the effect of the above quoted clause is that the Constitution of the United States has provided that the qualifications of the Federal electors in the State of South Carolina shall be the same as those provided in the Constitution of the said last named State for electors of the most numerous branch of the State Legislature as completely and clearly as though each and

every one of said qualifications were in exact words incorporated in the Constitution of the United States; and your orator avers that the said registration laws are in violation of Section 2 of Article 1 of the said Constitution in this, that they undertake to add to the qualification of the Federal electors of the State of South Carolina qualifications not prescribed by the Constitution of the United States, and your orator further avers that the said registration laws of the State of South Carolina are in violation of Section 1 of Article 14 of the Constitution of the United States, and also are in violation of Section 1, of Article 15, and of divers other sections and articles of said instrument.

And your orator further avers and charges that said registration laws are not reasonable, uniform or impartial regulations of the elective franchise—but, on the contrary, their purpose and effect is directly and indirectly to abridge and impede the constitutional right of the citizen to vote—to embarrass, render burdensome, the exercise of the elective franchise and, under pretence of regulating, to utterly destroy the suffrage of your orator and a large number of other citizens of said State in like circumstances with him.

10. By Section 2 of the aforesaid Act of 1894 it is provided that the election of delegates to the said Constitutional Convention shall be held on the third Tuesday in August, 1895, that the said Convention shall assemble on the second Tuesday of September, 1895, that such Convention is called for the purpose of revising, amending or changing the Constitution of said State, and when assembled will have full power to revise, alter, abridge, curtail and qualify the right of your orator and of all citizens of the said State of South Carolina to vote for the members of the most numerous branch of the State Legislature, and thereby to revise, alter, abridge and curtail the qualifications now requisite to enable your orator to vote at all Federal elections as now imposed by the Constitution of the United States.

11. That W. Briggs Green has been appointed to the office of supervisor of registration for Richland County aforesaid,

under and in pursuance of the said unconstitutional registration laws—that he is now exercising the duties prescribed by the same, and your orator has been informed and believes that he intends to continue so to do, and, furthermore, he specifically intends to furnish and deliver to the several boards of managers for the several precincts in Richland County aforesaid, to be hereafter appointed, to hold the election of delegates to the said Constitutional Convention, certain paper writings purporting to be the registration books aforesaid of the several precincts to be used by said managers at said approaching election.

12. Your orator further shows that under and by virtue of the said unconstitutional registration laws the supervisors appointed thereunder are required to continue said partial, void and illegal registration on the first Monday in May and June and July, 1895, and that after the first day of July, 1895, they are directed by Section 8 of the Act of 1894 to "furnish the managers at each precinct with one of the registration books for such precinct, and no elector shall be entitled to vote whose name is not registered as hereinbefore or already provided by law, and who does not produce his registration certificate at the polls where he offers to vote."

13. That your orator failed to register at the registration made after the general election of 1888, or to be registered during the ten days in March, 1895, provided for in said Act of 1894, because, although he made repeated and persistent efforts to become registered, he found himself unable to comply with the unreasonable, unnecessary and burdensome rules, regulations and restrictions prescribed by said unconstitutional registration laws as conditions precedent to his right to register, and your orator has never been allowed to vote at any Federal or State election of the said State of South Carolina.

14. That your orator is desirous of voting for delegates to the aforesaid Constitutional Convention at the election prescribed by the Act of 1894 for the purpose; that the paper writings purporting to be books of registration now in the hands of the said defendant do not and will not contain the

name of your orator as a registered voter for the reasons hereinbefore stated; that your orator and others like circumstanced with him will not be permitted to vote at said special election by the managers thereof unless their names be found upon the books of registration and they can produce the registration certificates hereinbefore mentioned; that if the said defendant be permitted to continue the aforesaid illegal, partial and void registration and be allowed to turn over to the managers of election for the aforesaid County of Richland (when appointed) said paper writings purporting to be books of registration for the several precincts in said county your orator will be deprived of his right to vote at said election, and grievous and irreparable wrong and damage will be done to your orator and a large class of citizens like circumstanced with him, which can be prevented only by the interposition of this Court by way of restraining the said defendant from the performance of any of the acts hereinbefore referred to.

To the end, therefore, that your orator may have full, perfect and sufficient relief in the premises, may it please your Honors to grant unto your orator a writ of injunction restraining and enjoining the said defendant individually and as supervisor of registration from the performance of any of the acts hereinbefore complained of, and that your orator may have such other and further relief in the premises as may be just and reasonable.

May it please your Honors to grant unto your orator a writ of subpœna, to be directed to the said defendant, commanding him at a certain time and under a certain penalty therein to be limited, personally to be and appear before your Honors in this honorable Court, then and there to answer unto this bill of complaint and to do and receive what to your Honors shall seem meet in the premises.

OBEAR & DOUGLASS,
Complainant's Solicitors.

STATE OF SOUTH CAROLINA, }
COUNTY OF RICHLAND. } *To wit:*

Lawrence P. Mills being duly sworn says, That the facts stated in the foregoing bill are true to the best of his knowledge and belief.

LAWRENCE P. MILLS.

Sworn to before me this 13th day of April, 1895.
(Seal.) E. R. ARTHUR,
Clerk Circuit Court.

RESTRAINING ORDER AND RULE TO SHEW CAUSE.

(FILED 19TH APRIL 1895.)

United States of America, South Carolina District—Lawrence P. Mills vs. W. Briggs Green—In the Circuit Court—Fourth Circuit—In Equity—Bill for Injunction.

On hearing the bill in the above entitled cause, and on motion of Messrs. Obear & Douglass, complainant's solicitors:

It is ordered that the defendant, W. Briggs Green, both individually and as supervisor of registration for Richland County, in the State of South Carolina, be enjoined and restrained until the further order of this Court from the commission of any of the acts complained of in the above entitled bill, a copy of which must be served upon him with this order.

It is further ordered that the said W. Briggs Green do show cause before me at Columbia, S. C., on Thursday, the 2nd day of May, next, why this order should not be continued, or some order of like purport and effect be then granted enjoining and restraining him, both individually and as such supervisor of registration, from the commission of any of the acts complained of in said bill until the final hearing and determination of this cause.

This hearing shall be in the United States Circuit Court room, Columbia, S. C.

This 16th April 1895.

NATHAN GOFF,
U. S. Circuit Judge, 4th Circuit.

(*Endorsement on Bill of Complaint.*)

H. J. Hickson, Deputy U. S. Marshal, being duly sworn, says, that he served a copy of the within bill of complaint for injunction upon W. Briggs Green personally in the city of Columbia, S. C., and travelled a distance of one hundred and thirty-two (132) miles in so doing on the 20th day of April, 1895.

H. J. HICKSON,
Chief Deputy U. S. M.

Sworn to and subscribed before me this 22nd day of April, A. D. 1895.

J. WESLEY SMITH,
(Seal) *U. S. Com'r.*

SUBPŒNA.

(*Filed 19th April 1895.*)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA. } *Fourth Circuit.*

The President of the United States of America, to W. Briggs Green:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the Judges of the Circuit Court of the United States for the District of South Carolina, at Charleston, on the 1st Monday of June, twenty days after the service thereof; then and

there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the Bill of Complaint of Lawrence P. Mills.

And, also, that you do, on the rules day next immediately after the day appointed and expressed, file, or cause to be filed, in the Registry of said Court, your plea, answer or demurrer, to the said Bill of Complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said Court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina District, aforesaid, the 19th day of April, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the Sovereignty and Independence of the United States of America.

O'BEAR & DOUGLASS,
Complainant's Solicitors.

MEMORANDUM.

The defendants will take notice that they are required to enter their appearance in this suit, in the Clerk's office of the Circuit Court of the United States for the District of South Carolina, on or before the first Monday of June, 1895, otherwise the bill will be taken pro confesso against them.

(Seal of Court.)

J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

(*Endorsement on Subpœna.*)

H. J. Hickson, Deputy U. S. Marshall, being duly sworn says, that he served a copy of the within subpœna *ad re.* upon W. Briggs Green personally in the City of Columbia, S. C., on the 20th day of April, 1895, and traveled a distance of one hundred and thirty-two (132) miles in so doing.

H. J. HICKSON,
Chief Deputy U. S. M.

Sworn to and subscribed before me this 22nd day of April. A. D. 1895.

(Seal.) J. WESLEY SMITH,
U. S. Com'r.

RETURN TO RULE TO SHEW CAUSE.

(*Filed 2nd May 1895.*)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA,
FOURTH CIRCUIT. } *In Equity.*

LAWRENCE P. MILLS,
vs.
W. BRIGGS GREEN. } *Bill for Injunction.*

To the Honorable Nathan Goff, Circuit Court of United States:

And now comes W. Briggs Green, supervisor of registration for Richland County, in the State of South Carolina, upon whom has been served an order of this Honorable Court, both as supervisor and individually, restraining and enjoining him until the further order of this Court from the commission of any of the acts complained of in the bill in the cause, and also requiring him to show cause before the Honorable Nathan Goff, United States Circuit Judge, at Columbia, S. C., on Thursday, the 2nd of May next, why the restraining order granted should not be continued, or some order of like purport and effect be then granted, enjoining and restraining him, both individually and as such supervisor of registration, from the commission of the acts complained of in the said bill, until the final hearing and determination of this cause, for cause, why said order of injunction should not be granted, says:

1. That he is supervisor of registration for Richland County, in the State of South Carolina, and as such is not amenable to the jurisdiction of the Court for his conduct in his political

capacity aforesaid; that the matters, facts and things alleged and complained of in the said bill, and upon which the injunction has been improvidently granted, are all matters relating to the political duties of the office.

That this is in effect a suit against the State of South Carolina, in violation of the 11th Amendment to Constitution of United States, and this Court has no jurisdiction.

2. That he submits that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this honorable Court.

3. That he submits the bill presents no case upon which the jurisdiction of a Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged, if so be that the allegations are true.

4. That the bill is totally defective for the purposes of the motion in its allegations and in the verification, in this that there is no sufficient averment of irreparable injury and statement of facts supporting it and that the material facts on which the injunction is sought are not positively sworn to by the complainant.

I. Respondent further says that he has no knowledge or information as to the truth of the statements contained in paragraph 2 of the bill.

II. That he has no knowledge or information sufficient to form a belief as to the matters and things set forth in the third paragraph of the bill, and, therefore denies them.

III. That he admits the truth of the statement made in the fourth, fifth and sixth paragraphs of the bill.

IV. As to the statements contained in paragraph 7 of the bill, your respondent denies that the various divers provisions, requirements and conditions set out in the various and sever-

al sections of the registration laws of South Carolina were intended, and that they in effect, do abridge, impede and destroy the suffrage of the citizens both of the State and of the United States; and as to all the other statements in said paragraph, your respondent prays the attention of this honorable Court to the registration law, embraced in Title 2 Chapter 7, of the General Statutes of 1882, and submits that its proper construction is a question for the Court.

V. That as to the statements contained in the 8th paragraph of the bill your respondent says that he admits that on the 24th of December, 1894, the General Assembly of the State of South Carolina did pass an Act entitled "An Act to provide for calling a Constitutional Convention, to provide the number and qualification of members of the Convention, their compensation, etc., and to provide for the election of the same, and to define and prescribe the qualifications of the electors, the manner of the election and of declaring the results."

That Section 4 of said Act is as follows:

"Every male citizen of the United States and of this State, of the age of 21 years, not laboring under the disabilities named in the Constitution of this State, and duly qualified to vote under the existing laws of the State, and duly registered as now required by law, or who having been entitled to register as a voter at the time of the general registration of electors of this State, which took place in the year of our Lord 1882, or at any time subsequent thereto, failed to register at that time as required by law, or who has become a citizen of this State, and who shall register as hereinafter provided in such cases, shall be entitled to vote for delegates to said Convention."

That Section 6 of last mentioned Act is materially misquoted in the 7th paragraph of said bill in that the most vital point affecting this action if omitted, and that said section is as follows:

"That on the first Monday of March, in the year of our Lord 1895, the supervisor of each county shall, at the county seat thereof, open his books of registration, and shall hold the same open for ten consecutive calendar days thereafter, except Sundays, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, except Charleston, Beaufort and Richland Counties, where the said books shall be kept open from 10 o'clock in the forenoon until 6 o'clock in the afternoon, during which time any elector then or theretofore at any time entitled to register as a qualified voter, or who has become a citizen of this State, shall be, during the time herein fixed for such registration, and also on the days now fixed by law for registration, entitled to register as such as hereinafter provided; and any elector having been heretofore duly registered, or having since changed his residence, or having lost his certificate, shall be entitled to have the same transferred or renewed as now provided by law:" that Section 7 of the last named Act is correctly quoted by the complainant. That he denies that the time allowed for the registration of electors is unreasonably short, or that the provisions of Section 8 of last named Act are burdensome, harassing, unreasonable or unnecessary, and that they result in a practical denial of the right of electors to vote; that as to all the other matters and things stated in the seventh paragraph of the bill, your respondent says he is advised and avers that no sections or provisions of the registration laws of South Carolina therein referred to, or of the Constitutional Convention Act of 1894, violate or contravene in any particular whatsoever either the Constitution of the United States, or of the State of South Carolina, and respectfully submits that the proper construction of all of said Acts is a question for the Court.

VI. That as to the matters and things stated in the 9th paragraph of the bill, your respondent submits that a proper construction of the sections and articles of the Constitution of the United States referred to in said paragraph is a question for the Court; that he denies so much of the paragraph of the bill as avers and charges "that said registration laws are not reasonable, uniform or impartial regulations of the elective

franchise; but, on the contrary, their purpose and effect is directly and indirectly to abridge and impede the constitutional right of the citizen to vote, to embarrass, render burdensome the exercise of the elective franchise, and, under pretence of regulating, to utterly destroy the suffrage of the complainants or other citizens of the State.

VII. That as to all the matters and things set forth in the tenth paragraph of the bill, your respondent calls attention of the Court to the Act of the General Assembly of 1894, known as the Constitutional Convention Act, and respectfully submits that its proper coustruction is a question for the Court.

VIII. That as to the matters stated in the eleventh paragraph of the bill he admits that he is Supervisor of Registration for Richland County, and is now exercising the duties of his office and purposes to continue to do so, but he denies that the registration law or any part thereof is unconstitutional.

IX. That as to the matters and things stated in the twelfth paragraph of the bill your respondent says that the Supervisors of Registration are required by law to open the registration books on the first Mondays of May, June, July and August, 1895, for the registration of electors, but your respondent denies that such registration will be void and illegal, or that the laws providing for it are unconstitutional.

X. That as to the allegations of the thirteenth paragraph of the bill your respondent says that he has no knowledge or information as to whether the complainant has heretofore registered as an elector, or has endeavored to do so, or whether he has ever voted at any Federal or State election, but denies that the registration laws are unconstitutional, that the rules, regulations and restrictions prescribed by them are unreasonable, unnecessary or burdensome.

XI. That as to the matters and things set forth in the fourteenth paragraph of the bill respondent says that the time allowed by law within which the complainants and others like circumstanced with them can apply for registration and

obtain registration certificates has not yet expired, nor is it about to expire, but that by Section 6 of the Constitutional Convention Act heretofore referred to any and all electors in the State of South Carolina not now registered have four days to wit, the first Mondays in May, June, July and August, 1895, within which to apply for registration, and if the complainants and other citizens now unregistered do not so apply, their inability to vote for delegates to the Constitutional Convention will be due to their own carelessness and dereliction.

Wherefore your respondent prays that the motion for the order of injunction may be dismissed.

W. BRIGGS GREEN,
W. A. BARBER, Attorney General,
For Respondent.
EDWARD McCRADY,
GEORGE S. MOWER,
Of Counsel.

Sworn to before me this 1st day of May, A. D. 1895.
C. P. TOWNSEND,
[L.S.] *Notary Public.*

ORDER MODIFYING RESTRAINING ORDER.

(*Filed 4th May 1895*)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA.
IN THE CIRCUIT COURT.
In Equity.

LAWRENCE P. MILLS, COMPAINANT,

vs.

W. BRIGGS GREEN, DEFENDANT.

Whereas, Monday, the 6th day of May, A. D. 1895, is one of the days appointed by law for the registration of electors in South Carolina, and the defendant in the above stated case is

enjoined, as Supervisor of Registration, from opening the books of registration on that day, it is

ORDERED, that the restraining order heretofore made in this case be, and the same is hereby modified, so as to allow the defendant, W. Briggs Green, as Supervisor, to open the books of registration on the first Monday in May, 1895, for the purpose of allowing applications for registration to be made by electors.

N. GOFF,
U. S. Circuit Judge.

May 4th, 1895.

OPINION.

(*Filed 8th May 1895*)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

LAWRENCE P. MILLS,
vs.
W. BRIGGS GREEN. } *In Equity.*

On the 20th day of April last, on consideration of the bill in this cause, I passed an order that the defendant, W. Briggs Green, individually and as supervisor of registration for Richland County, in the State of South Carolina, be enjoined and restrained until the further order of this Court from the commission of the acts complained of in complainant's bill, and I directed that said defendant show cause before me, if any he could, at Columbia, S. C., on Thursday, May 2d instant, why such order should not be continued, or some order of like purport and effect be then granted, enjoining and restraining him both individually and as such supervisor of registration from the commission of said acts until the final hearing and determination of this cause.

The plaintiff, a citizen of the State of South Carolina and of the United States, brings this suit against W. Briggs Green, a citizen of said State and of the United States. The plaintiff exhibits his bill in his own behalf and for all others, citizens of the

County of Richland, in the State of South Carolina, circumstanced like him, who are too numerous to be named and made parties hereto. It is set forth in the bill that the plaintiff was 25 years of age on the 4th day of February, 1895; that he is a resident of Ward 4, precinct of Columbia, in said county and State; that he is a male citizen of the United States; that he has resided in the State of South Carolina for more than one year preceding the last general election in that State, and in the County of Richland for more than sixty days prior to said general election; that he is an elector of the State of South Carolina, possessing all the qualifications of an elector of the most numerous branch of the State Legislature, and is subject to none of the disqualifications set forth in the Constitution of that State, and that he is, under the Constitution and laws of the United States, duly qualified to vote at all Federal and State elections held in said ward, county and State.

It is set forth in the bill that Section 90 of the General Statutes of South Carolina of 1882, provides as follows: "All electors of the State shall be registered as hereinafter provided, and no person shall be allowed to vote at any election hereafter to be held unless registered as hereinafter required; that by Section 94 of said Statutes it is provided: When the said registration (in certain books to be provided for and made in the manner provided for in Section 93) shall have been completed, the books shall be closed and not opened for registration, except for the purposes and as hereinafter mentioned, until after the next general election for State officers. After the said next general election the books shall be opened for registration of such persons as shall thereafter become entitled to register on the first Monday in each month to and until the first Monday in July inclusive, preceding the following general election, upon which last named day the same shall be closed and not reopened for registration until after the said general election, and that thereafter the said books shall be opened for the registration of such electors on the days above mentioned until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place;" that in Section 137 of said Revised Statutes it is provided: "After every general election the registration books shall be opened for registration of such persons as shall thereafter become entitled to register, on the first Monday in each month until the first day of July preceding a general election, when the same shall be closed until such election shall have taken place;" that Section 97 provides: "Any person coming of age, and being qualified as an elector, may appear before the supervisor of registration on any day on which the books are opened as aforesaid and take oath as to his age and qualifications as hereinbefore provided, and if the supervisor find him qualified he shall enter his name upon the registration book

of the precinct wherein he resides." It is also alleged that said registration laws provide that the supervisors of registration in the several counties shall issue to the voter when registered a certificate of registration, and that said voter shall present the same at the polls to the managers of the election, and that no one shall be allowed to vote at any election to be held in said State unless his certificate of registration is exhibited when he offers to vote, and that it is required by said law that in case a voter shall remove from one county to another in said State, or from one precinct to another in the same county, or from one residence to another in the same precinct, that he shall obtain a transfer and a renewal certificate, and that should a voter lose his certificate he must obtain a renewal thereof upon furnishing evidence satisfactory to the registrar of the county wherein he resides that his certificate has been mislaid or lost, and that the same has not been wilfully or intentionally disposed of. The bill also alleges that by the provisions and requirements of said enactment the voter failing for any reason to comply with any of the provisions of the same is denied the right of suffrage, both in Federal and State elections. Complainant claims that the provisions of the said enactments fixing the time for registration and the closing of the books for that purpose on the first day of July preceding every election, and the many requirements and conditions set out in the various sections of said registration law were intended, and that they in effect do abridge, impede and destroy the suffrage of the citizens, both of the State and of the United States.

It is also averred that on the 24th day of December, 1894, an Act was passed by the General Assembly of South Carolina entitled "An Act to provide for calling a Constitutional Convention, to provide the number and qualifications of members of the Convention, their compensation, etc., and to provide for the election of the same, and to define and prescribe the qualifications of the electors, and the manner of the election and of declaring the result." That by Section 4 of said Act it is declared who shall be entitled to vote for delegates to said Constitutional Convention, and that in addition to the qualifications prescribed for electors by the Constitution of the State of South Carolina is provided a further one, viz: "that the elector be duly registered as now required by law, or who having been entitled to register as a voter at the time of the general registration of electors in the State which took place in the year 1882, or at any time subsequent thereto, failed to register at such time, or who has become a citizen of this State, and who shall register as hereinafter provided in such cases."

Other provisions of the laws and of the Constitution of the State of South Carolina are set forth, but I do not deem it necessary to now recite them.

The bill charges that W. Briggs Green has been appointed to

the office of supervisor of registration for Richland County in pursuance of said registration laws; that he is now exercising the duties prescribed by the same, and that he intends to continue so to act, and that he intends to furnish to the several boards of managers for the precinct in which plaintiff resides in said County, who hold the election of delegates to said Constitutional Convention, certain paper writings purporting to be the registration books for use at such precincts.

The complainant says that he failed to register at the registration made after the general election in 1888, and during the ten days in March, 1895, provided for in the Act of 1894, because although he made repeated and persistent efforts to become registered he found himself unable to comply with the unreasonable, unnecessary and burdensome rules, regulations and restrictions prescribed by said unconstitutional registration laws as conditions precedent to his right to register, and that he has never been allowed to vote at any Federal or State election of the State of South Carolina; that he is desirous of voting for delegates to the said Constitutional Convention, and that the paper writing purporting to be books of registration now in the hands of the defendant do not and will not contain his name as a registered voter for the reason before stated; that he and others like circumstanced with him will not be permitted to vote at said special election by the managers thereof unless their names be found upon the books of registration and they produce the registration certificate mentioned; and that if the defendant be permitted to continue the aforesaid illegal, partial and void registration, and be allowed to turn over to the managers of such election for the County of Richland the books of registration for said County he, the plaintiff, will be deprived of his right to vote at said election and grievous and irreparable wrong and damage will be done him, which can only be prevented by the interposition of this Court by way of restraining the defendant from the performance of said before mentioned acts.

The defendant, in his return to the rule to show cause, insists that as Supervisor of Registration for Richland County he is not answerable to the jurisdiction of this Court, and that the matters, facts and things alleged and complained of in the bill are matters relating to the political duties of his office; that this is in effect a suit against the State of South Carolina which is prohibited by the 11th amendment to the Constitution of the United States; also that the bill presents no question arising under the Constitution or laws of the United States, and that this Court has no jurisdiction of the case; that the bill presents no case for equity jurisdiction, as the plaintiff has a plain and adequate remedy at law; that the bill is multifarious and not properly verified; he denies that the registra-

tration laws were intended and that they in effect do abridge, impede and destroy the suffrage of the citizens of the State and of the United States, and he claims that they are reasonable and constitutional, and submits their proper construction to the Court. The other matters set up in the return will not now be recited, but will be considered in substance as the questions arising are disposed of.

The question of jurisdiction is first to be determined. Defendant insists that this suit is in effect a proceeding against the State of South Carolina, and that it should not be entertained because prohibited by the 11th amendment to the Constitution of the United States It is not my intention at this time to consider separately the many cases cited by counsel in argument bearing on this question. After carefully examining them all I conclude that it is the duty of the Circuit Court of the United States to restrain a State officer from executing an unconstitutional statute of the State when the execution of it by him would violate or abridge the rights, privileges and immunities of the complainant that are granted by the Constitution of the United States. So far as this question is concerned it is immaterial if the officer so restrained be the Supervisor of Registration, the Auditor of State, the Comptroller General, the Treasurer, the Attorney General or the Governor.

We do not have in this country any class of people, State or national officials, or private citizens who are above the law, and who are not compelled to respect it. The Constitution of the United States is the supreme law of the land, anything in the Constitution or laws of any of the States to the contrary notwithstanding. The mandate of the Nation's Constitution is addressed to all officers of the United States, as well as to all the officers of all the States. The Judges of the Federal, as well as of the State Courts, must respect it, for it declares that the Judges of every State shall be bound thereby. As is said by the Supreme Court in Dodge vs. Woolsey, 18 How. 331:

"To make its supremacy more complete, impressive and practical, that there should be no escape from its operation and that its binding force upon the States and the members of Congress should be unmistakable, it is declared that the Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States,

shall be bound by oath or affirmation to support this Constitution."

It would be a strange admission, a startling decision, that the Courts of the United States cannot open their doors to the citizens of the United States, who allege that they are by the unconstitutional laws of a State deprived of their privileges or immunities as citizens of the United States, and denied the equal protection of the laws within the jurisdiction of such State. I am not aware that any Court of the United States has ever so held. I trust I will never be advised of such a decision, and I am sure, as I now see the law and my duty, that I will not so rule, not establish such a precedent.

The case of *in re.* Ayers, 123 U. S., 443, relied on by defendant's counsel, does not, in my judgment, sustain the position taken by them. In that case the jurisdiction of the Circuit Court was denied, not because the officers of the State were sued, but because the Court found that the Act of the Legislature complained of did not violate any contract, and because the bill did not allege any ground of equitable relief against the individual defendants for any personal wrong committed or threatened by them; because it did not charge against them in their individual character anything done or threatened which constituted in contemplation of law a violation of personal or property rights, or a breach of contract to which they were parties. In these particulars the Ayers case differs materially from the case now before me. In that case the Supreme Court says:

"But this is not intended in any way to infringe upon the principle which justifies suits against individual defendants, who, under color of the authority of unconstitutional legislation by the State, are guilty of personal trespasses and wrongs, nor to forbid suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial in the performance or omission of which the plaintiff has a legal interest."

In Davis vs. Gray, 16 Wall., 203, the Supreme Court held, that a Circuit Court of the United States, in a proper case in Equity, may enjoin a State officer from executing a State law in conflict with the Constitution or a Statute of the United States, when such execution will violate the rights of the com-

plainant; that making a State officer a party does not make the State a party, although her law may prompt his action, and she may stand behind him as the real party in interest. That case was a suit by Gray against Davis, the Governor of the State of Texas, and Keuchler, commissioner of the land office of that State, and the injunction issued by the Circuit Court of the United States for the Western District of Texas, restraining said officers from issuing and signing certain land warrants, was sustained, as I have mentioned, by the Supreme Court of the United States.

In the case of Pennoyer vs. McConnaughy, 140 U. S. 1, in which the Supreme Court reviewed the cases bearing on this subject, Mr. Justice Lamar, speaking for the Court, said: "But the general doctrine of Osborne *vs.* the Bank of the United States, that the Circuit Courts of the United States will restrain a State officer from executing an unconstitutional statute of the State, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution, and would work irreparable damage and injury to him, has never been departed from. On the contrary, the principles of that case have been recognized and enforced in a very large number of cases, notably in those we have referred to as belonging to the second class of cases above mentioned." In reference to the case just referred to he used this language:

"The first class is where the suit is brought against the officers of the State as representing the State's action and liability, thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts. In re Ayers, 123 U. S. 443; Louisiana *vs.* Jumel, 107 U. S. 711; Antoni *vs.* Greenhow, 107 U. S. 769; Cunningham *vs.* Macon and Brunswick Railroad, 109, U. S., 446; Hagood *vs.* Southern, 117 U. S, 52. The other class is where a a suit is brought against defendants who, claiming to act as officers of the State under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants unlawfully taken by them in behalf of the State, or for compensation in damages, or in a proper case where the remedy at law is inadequate for an injunction to prevent such wrong and injury, or for a mandamus in a like case to enforce upon the defendant the performance of a plain legal duty, purely ministerial, is not, within the meaning of the 11th amendment, an action against the State. Osborne *vs.* Bank of the United States, 9 Wheat., 738; Davis *vs.* Gray, 16 Wall, 203; Tomlinson *vs.* Branch, 15 Wall, 460; Litchfield *vs.* Webster County, 101 U. S., 773;

Allen *vs.* Baltimore and Ohio Railroad, 114, U. S., 311; Board of Liquidation *vs.* McComb, 92 U. S., 531; Poindexter *vs.* Greenhow, 114 U. S., 270."

Complainant insists that his case is included in the reasoning of the Court in the cases last cited, and also that he is entitled to present his bill to this Court relative to the matters therein set forth, because of the provisions of the Constitution of the United States, and particularly the 14th and 15th amendments thereof. To the consideration of this point and of the constitutionality of the registration laws of the State of South Carolina we now come. Complainant insists that the registration laws of South Carolina are in contravention of the provisions of the Constitution of South Carolina, and that they also violate the Constitution of the United States, his rights as a citizen of the United States being so affected thereby as to entitle him to be heard in this Court on the complaint we now consider. The Constitution of South Carolina contains the following provisions: Article 1, Section 31. "All elections shall be free and open, and every inhabitant of this Commonwealth possessing the qualifications provided for in this Constitution shall have equal right to elect officers and be elected to fill public offices."

Article 8, Section 2: "Every male citizen of the United States of the age of 21 years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall hereafter reside in this State one year and in the county in which he offers to vote sixty days next preceding any election, shall be entitled to vote for all officers that are now or hereafter may be elected by the people and upon all questions submitted to the electors at any election: Provided, that no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States until such disqualifications shall be removed by the Congress of the United States; provided, further, that no person while kept in any alms house or asylum, or of unsound mind or confined in any public prison, shall be allowed to vote or hold public office."

Article 8, Section 3: "It shall be the duty of the General Assembly to provide, from time to time, for the registration of all electors."

Article 8, Section 7: "Every person entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the county where he shall have resided sixty days previous to such election, except as otherwise provided in this Constitution or the Constitution and laws of the United States."

Article 8, Section 8: "The General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, robbery or duelling, whereof the person shall have been duly tried and convicted."

Section 2, Article 1, of the Constitution of the United States is as follows: "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State Legislature."

Section 1, Article 14, amendments, is in these words: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Article 15 of the amendments to the Constitution reads:

Section 1. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

Section 2. The Congress shall have power to enforce this article by appropriate legislation. The Congress has given to the Circuit Courts of the United States jurisdiction of all suits to enforce the right of citizens of the United States, to vote in the several States.

We find now that a citizen of South Carolina is a citizen of the United States residing in that State. The rights, privileges, and immunities belonging to him as a free citizen are his as a citizen of the United States, and do not depend upon his citizenship of that State. The plaintiff, Mills, a citizen of African descent, is a citizen of the United States and of the State of South Carolina. By the 14th Amendment he has been made a citizen of the United States, and by the 15th Amendment he is a voter in the State in which he resides. Previous to the adoption of these amendments the race to which he belongs had no rights that the white men of this country were bound to respect, and it was not

possible for anyone belonging to it to be a citizen of the United States. In the Slaughter House cases the Supreme Court of the United States, referring to the time immediately preceding and following the adoption of these amendments, said:

"The institution of African slavery, as it existed in about half the States of the Union, and the contests pervading the public mind for many years between those who desired its curtailment and ultimate extinction and those who desired additional safeguards for its security and perpetuation, culminated in the effort, on the part of most of the States in which slavery existed, to separate from the Federal Government and to resist its authority. This constituted the war of the rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African slavery.

"In that struggle slavery as a legalized social relation perished. It perished as a necessity of the bitterness and force of the conflict. When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel; and when hard pressed in the contest these men, for they proved themselves men in that terrible crisis, offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, slavery was at an end wherever the Federal Government succeeded in that purpose. The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts when he declared slavery abolished in them all. But the war being over those who had succeeded in re-establishing the authority of the Federal Government were not content to permit this great Act of Emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the 13th article of amendment to that instrument. Its two short sections seem hardly to admit of construction, so vigorous is their expression and so appropriate to the purpose we have indicated.

"1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"2. Congress shall have power to enforce this article by appropriate legislation. * * * * *

"The process of restoring to their proper relation with the Federal Government and with the other States those which had sided with the rebellion, undertaken under the proclamation of

President Johnson, in 1865, and before the assembling of Congress, developed the fact that, notwithstanding the formal recognition by those States of the abolition of slaves, the condition of the slave race would, without further protection of the Federal Government, be almost as bad as it was before. Among the first Acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the Federal Government were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value, while they had lost the protection which they had received from their former owners from motives both of interest and humanity.

"They were in some States forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain, and were not permitted to give testimony in the Courts in any case where a white man was a party. It was said that their lives were at the mercy of bad men, either because the laws for their protection were insufficient or were not enforced.

"These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced upon the statesmen who had conducted the Federal Government in safety through the crisis of the rebellion, and who supposed that by the 13th article of the amendment they had secured the result of their labors, the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the 14th amendment, and they declined to treat as restored to their full participation in the government of the Union the States which had been in insurrection until they ratified that article by a formal vote of their legislative bodies."

Before we proceed to examine more critically the provisions of this amendment (on which the plaintiffs in error rely) let us complete and dismiss the history of the recent amendments, as that history relates to the general purpose which prevades them all. A few years' experience satisfied the thoughtful men who had been the authors of the other two amendments that, notwithstanding the restraints of those articles on the States, and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty and property, without which freedom to the slaves was no boon. They were in all those States denied the

right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked as was the negro, living in the midst of another and dominant race, could never be fully secured in their person and their property without the right of suffrage.

Hence the 15th amendment, which declares that "the right of a citizen of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude." The negro, having, by the 14th amendment, been declared to be a citizen of the United States, is thus made a voter in every State of the Union.

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all, and on the most casual examination of the language of these amendments, no one can fail to be impressed with the one prevading purpose found in them all, lying at the foundation of each, and without which none of them would have even been suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the 15th amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race and designed to remedy them as the 15th.

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly while negro slavery alone was in the mind of the Congress which proposed the 13th article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void.

And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent. But what we do say and what we wish to be understood, is that in any fair and just construction of any section or phase of these amendments it is necessary to look to the purpose which we have said was the

prevading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the Constitution until that purpose was supposed to be accomplished as far as constitutional law can accomplish it.

The 1st section of the 14th article, to which our attention is more especially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by Act of Congress. It had been the occasion of much discussion in the Courts, by the executive departments, and in the public journals. It had been said by eminent Judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens.

Whether this proposition was sound or not had never been judicially decided. But it had been held by this Court in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States.

This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen were still not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which would declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the 1st Section was framed:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside."

The first observation we have to make on this clause is that it puts at rest both the questions which we stated to have been

the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States.

That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls and citizens or subjects of foreign States born within the United States.

While it is true that the Supreme Court has held that the 14th amendment did not add to the privileges and immunities of a citizen and that no new voters were necessarily made by it, it is equally true that it in effect held that it increased the number of citizens entitled to suffrage under the Constitution and laws of the States. It also held that in the light of the history of the late amendments that there was no difficulty in giving a proper meaning to their provisions, and that the existence of laws in those States where the emancipated negroes resided which grossly discriminated against them as a class was the end to be remedied by them, and that by them such laws are forbidden. It also fully determined that a citizen of a State is now simply a citizen of the United States residing in that State; that his rights as such are those that belong to him as a citizen of the United States, and that they are not dependent upon his citizenship of any State, do not depend upon its legislation and cannot be destroyed by its power. As I understand the decisions of the Supreme Court, they sustain the claim of this plaintiff, that the Courts of the United States are open for the relief of citizens of the United States whose privileges have been abridged by the State in which he resides. Certainly they should be and I will surely so hold until advised by that Court that I am in error. From those same decisions I find that while the right of suffrage is not a necessary attribute of Federal citizenship, that it surely is such an attribute as is exempt from discrimination in the exercise of that right on account of race and previous condition, and that while the right to vote in the States comes from the States, that the right of exemption from the prohibited discrimination comes from the United States.

While as a rule the rights of a citizen of a State are such as all citizens of the United States enjoy, yet this plaintiff has also certain rights under the Constitution of South Carolina by virtue of the Act of Congress of June 25, 1868, which was

accepted and acted upon by that State, in which it is provided that the Constitution of said State shall never be so changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State who are entitled to vote by the Constitution of the same, recognized in said Act, except as a punishment for crime. The Constitution there referred to is one from which I have before quoted the present organic law of that State.

Are the registration laws of South Carolina constitutional? Do they prevent the plaintiff and those situated like him from exercising the rights conferred upon and guaranteed to him? A registration law is not per se unconstitutional, but is the one referred to in the bill such as should be upheld by the Courts? Does the State of South Carolina by this legislation deprive the plaintiff of any of the privileges to which he is entitled by the Constitution of the United States and of that State? Does it deprive him of his liberty by taking from him a right by which he can preserve that liberty? Does it deny him the equal protection of her laws by enacting a system of registration which does not protect but destroys his rights? If it does disfranchise him, are not his liberty and his property taken from him? If it does prevent him from voting (it is shown that he is duly qualified) for delegates to the Constitutional Convention mentioned in the bill, which may so change the organic law of the State as to affect his life, his property, his liberty, his franchise, does it not do him a grievous wrong, and by what authority?

As pertinent to this I quote the words of Mr. Justice Swayne in the Slaughter House cases: "Life, liberty and property are forbidden to be taken without due process of law, and equal protection of the laws is guaranteed to all. Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints, but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies to a large extent at the foundation of most other forms of property, and of all solid individual and national property. 'Due process of law' is the application of the law as it exists in the fair and regular course of administrative procedure. 'The equal protection of the laws' places all upon a footing of legal equality and gives the same protection to all for the preservation of life, liberty and property and the pursuit of happiness."

It is not my intention at this time to state in detail the requirements and effect of each section of said registration law, but simply the result that I reach after a careful scrutiny of them all, aided as I have been by the exhaustive analysis of the same made by counsel. I find no warrant in the Constitution for the the certificate required by the registration law to be issued to the voter, the production of which is required at the polls, or his vote is to be rejected. This is not registration which is simply the entering on the books or lists of voters of the names of those qualified under the Constitution to vote, but it is an additional requirement to those mentioned in the organic law, not intended, I am constrained to believe, to facilitate the full, free and legal expression of those entitled to exercise the right of suffrage. Such requirement is unreasonable, burdensome and harassing, and clearly it impedes and abridges the right of the constitutional voters of the State to cast their ballots.

The additional requirement that the voter moving from one place to another in the same precinct must surrender his old and secure a new certificate is without reason and vexatious, while the mode prescribed for securing a renewal thereof in case of loss is so cumbersome and peculiarly stringent that it likely fulfills its object in deterring the ordinary voter from making the effort. The registration of voters closes on the first day of July preceding a general election, which is held in November following. What possible reason is there for this unreasonable course? During the four months preceding an election, the period voters generally devote to the examination of questions then to be determined, and to the placing of their names on the voting lists when such lists are required—it is utterly impossible for any duly qualified voter to have his name registered, and necessarily results in depriving many of them of the right of suffrage.

The only parties permitted to register during the four months preceding the election are those becoming of age during the period provided they furnish satisfactory proof.

The Constitution says that the citizen who shall have been a resident of the State for one year, and of the county in which he offers to vote for sixty days next preceding any election shall be entitled to vote at such election, and yet he is prohibited by this requirement from so doing.

He has completed his one year's residence after the first day of July, but he cannot register because the books are closed, and he cannot vote because his name is not upon the

books—and there is no provision by which he can prove to the election officers at the polls that he is a qualified and legal voter.

This entire provision is most peculiar, without a precedent, and without defence even from the advocates of the law. Why the books should be closed for months before the election and kept open for months after it was over, to the uninformed would be passing strange, and yet in the light of the recent history of this State, and the discussion of this cause, is easily understood.

That such requirements are not only unreasonable but unconstitutional is shown by the following cases:

Morris vs. Powell, 29 American Law Register, 839; White vs. Commissioners of Multromah County, 13 Oregon, 317; Kinnees vs. Wells, 144 Mass., 497; State vs. Welis, 5 Wis., 308; Quin vs. State, 25 Ind., 485; McCaffery vs. Guyer, 59 Pa., 109; Green vs. Shundy, 39 N. Y., 418; Munroe vs. Collins, 17 Ohio, 686; People vs. Canada. 73 N. C., 198; Cooley's Const. Lim., 753; Attorney General vs. City of Detroit, 44 N. W. Rep., 388.

A careful examination of the registration enactment of the State of South Carolina—excluding the Act of 1894—brings me to the conclusion that if a voter who was duly qualified and entitled to register in May and June, 1882, did not on account of absence, sickness, inadvertence or other causes, register when the books were open in that year, that he was not only prevented from voting at the general election in November, 1882, but was and has been prevented—under the law—from voting at all elections held in the State subsequent to said election in 1882. This seems almost incredible, yet I think it is correct. The statement is appalling, the outrage stupendous, the result close to the borderland that divides outrage from crime. It is not necessary to discuss it further—likely the least said about it the better.

Does the Act of 1894, the Convention Act, with its four sections relating to registration, cure the defects I have alluded to and render valid the former unconstitutional laws I have mentioned? In my opinion it does not. These sections refer to the old law, in fact are to be considered as a part of it, as amendments thereto, and they contain all the bad features thereof, including the certificates to be produced at the polls, and the closing of the books many days before the election. They also add to the

qualifications contained in the Constitution relative to the residence of the voter in the State and county. And they make no provision for the registering of voters between the closing of the books and the election, when their names have been omitted on account of absence, or other usually sufficient reason. Again, the applicant for registration must make affidavit setting forth his full name, age, occupation and residence at the time of the general registration in 1882, or at the time thereafter when he became entitled to register, and also give the place or places of his residence since the time when he became entitled to register. This affidavit must be supported by the affidavit of two respectable citizens who were each of the age of 21 years on the 30th day of June, 1882, or at the time the applicant became entitled to register. Our most intelligent voters would dread this ordeal, this history of their movements for years, this statement of the different places at which they have lived, this securing of two reputable affiants, who must have been 21 years of age in 1882, or at the time the applicant arrived at voting age. With what crushing force, then, must it strike the weaker race, which is thus made to suffer by the stronger, how difficult for them to thus write out the books of their lives, and have all the pages thereof attested by two witnesses, reputable in the estimation of the registrar who is to judge them. In my opinion the fact that there still remains several days—prior to the election—during which the plaintiff may apply for registration does not, in the light of the allegations of the bill, the proofs tendered and admissions made prevent him from asking for nor the Court from granting the relief prayed for.

I was asked, in case any portion of the said registration laws should be found invalid, to eliminate the part so found and decree that the remaining section should stand. I have not been able to make the separation, for I find it all so interwoven as to render it impracticable, so far as results are concerned, and I cannot winnow when there is no grain. In behalf of those so treated all interested in the welfare of their country and desirous of seeing its laws enforced should protest, in order that public sentiment should no longer be dormant, but may by its activity rouse the community that has long suffered by such outrages to a realization of their cause, and to an appreciation of the beneficial results to be secured by the abolishment of the system that has caused them.

If we may judge of what the intention of the Legislature was by the inevitable result of its enactment, as we are assured we can, (Soon Hing vs. Crowley, 113 U. S., 703; Minnesota vs. Barber, 136 U. S., 313) then the one object that controlled the minds of those who formulated the enactment I

have been considering was how best to abridge and destroy the greatest number of votes of the citizens of African descent, while at the same time interfering with as few as possible of the votes of the white race.

The fact is that with a candor that was as frank as it was amazing, this was virtually admitted during the argument of this case.

It is evident that the effect of this registration system is to fearfully impede the exercise of the right of suffrage by the colored voters of the State of South Carolina.

It to a great extent defeats their constitutional right to vote, and it seems to be its leading, I must be permitted to say, its only object, the effort being to so legislate as to apparently respect constitutional requirements, but at the same time stab to the death the rights and immunities guaranteed by them.

Finding as I do that the registration laws of South Carolina are unconstitutional and that their enforcement will deprive the plaintiff, a citizen of the United States, of the rights of a citizen of the same, I conclude that this Court has jurisdiction of this case, and that the same is not a proceeding against the State of South Carolina, prohibited by the 11th Amendment to the Constitution of the United States; I find that the bill does present a question arising under the Constitution and laws of the United States, and that the plaintiff has not a plain and adequate remedy at law, that the bill is sufficiently verified and not multifarious.

Under these circumstances it is the duty of the Circuit Court of the United States for the District of South Carolina to entertain this complaint—an instance in which duty mingles with inclination.

I have noticed during the progress of this case a disposition to regard this Court as a foreign jurisdiction, much to my surprise and my regret. This is as much a Court of the State of South Carolina as is the Circuit or Supreme Court of that State. The State of South Carolina assisted in forming the Constitution and making the laws by virtue of which this Court was organized and now convenes. This Court is and will be as careful and as jealous of the honor and the interests of that State as any of her citizens can be, and it hopes to merit their esteem by being

worthy of it. A distinguished jurist of that State is my associate on the circuit and the Chief Justice of the United States is its presiding Justice. Why such a Court of the United States, convening in South Carolina, administering the laws of the nation and of that State, should be regarded as a foreign Court is wonderful in the extreme and as strange as is the story relative to which it is about to enter its decrees.

I will pass an order, as prayed for by complainant, restraining and enjoining the defendant individually and as supervisor of registration from the performance of any of the acts mentioned and complained of in the bill.

NATHAN GOFF,
United States Circuit Judge.

May 8th, 1895.

ORDER CONTINUING INJUNCTION.

(Filed 8th May 1895)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA
FOURTH DISTRICT. } *In the Circuit Court.*

LAWRENCE P. MILLS, COMPLAINANT,

vs.

W. BRIGGS GREEN, RESPONDENT.

Upon reading and filing the return of the respondent herein to the bill of the complainant, and upon hearing the argument of all the counsel of the parties to this action :

Now, on motion of Obear & Douglass, attorneys for the complainant :

It is ordered: That the restraining order heretofore granted by this Court, bearing date the 16th day of April, 1895, enjoining and restraining the said respondent from exercising duties or performing any acts complained of in the said bill of the complainant, either individually or as Supervisor of Registration for the County of Richland, State aforesaid, be, and the same is hereby, continued, subject to the final determination of the issues involved in this case or until the further order of this Court.

Dated at Columbia, S. C., this the 8th day of May, 1895.

NATHAN GOFF,
United States Circuit Judge.

PETITION FOR APPEAL.

(Filed 23d May 1895.)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA.
FOURTH CIRCUIT.

In the Circuit Court.

In Equity.

LAWRENCE P. MILLS, Complainant,

vs.

W. BRIGGS GREEN, as Supervisor of Registration for Richland County, and Individually, Defendant.

To the Honorable Judges of the Circuit Court of the United States, for the District of South Carolina:

W. Briggs Green, a party to the above entitled cause, presents and files this his petition for an appeal to the United States Circuit Court of Appeals, for the Fourth Circuit, from the interlocutory order filed 8th May, A. D. 1895, continuing the injunction granted by Honorable Nathan Goff, U. S. Circuit Judge, on 16th day of April, A. D. 1895, restraining your petitioner as Supervisor of Registration for Richland County, South Carolina, and individually, from the commission of any of the acts mentioned in the bill relating to the registration of voters, preparing books of registration, turning them over to Managers of Elections, &c.

Hereto annexed, and herewith filed with the Clerk of the said Court of the United States for the District of South Carolina, is an assignment of errors to the said interlocutory order, which sets out separately and particularly each error asserted and intended to be urged.

WILLIAM A. BARBER,
Attorney General.
EDWARD McCRADY,
Of Counsel for W. Briggs Green.

Prayer of the petition granted and appeal allowed.

CHARLES H. SIMONTON,
Circuit Judge.

23rd May, 1895.

ASSIGNMENT OF ERRORS.

(Filed 23d May 1895.)

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA,
FOURTH CIRCUIT.
} IN THE CIRCUIT COURT—IN EQUITY

LAWRENCE P. MILLS, Complainant,

vs

W. BRIGGS GREEN, as Supervisor of Registration for Richland County, and individually—Defendant.

And now comes W. Briggs Green, defendant in the above named cause, and excepts to the orders of injunction filed in this cause on the 16th day of April and the 8th day of May, respectively.

1. Because this suit is in effect one against the State of South Carolina, and as such is in violation of the eleventh Amendment of the Constitution of the United States.

2. Because, he submits, that he is Supervisor of Registration for Richland County in the State of South Carolina, and as such is not amenable to the jurisdiction of this Court for his conduct in his political capacity aforesaid; that the matters, facts and things alleged and complained of in the said bill and upon which the injunctions have been improvidently granted are all matters and things relating to the political duties of the office.

3. Because, he submits, that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to the Circuit Court of the United States.

4. Because, he submits, that the bill presents no case upon which the jurisdiction of a Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged, if so be that the allegations are true.

5. Because, he submits, that the bill does not allege affirmatively the jurisdictional amount necessary to be involved in the suit.

6. Because, he submits, that the bill is totally defective for the purposes of an injunction in its allegations and in the verification, in this, that there is no sufficient averment of irreparable injury and statement of facts supporting it, and that the statement of facts on which the injunction is sought are not positively sworn to by the complainants.

7. Because his honor erred in holding that the registration laws of South Carolina are unconstitutional and that their enforcement will deprive the plaintiff a citizen of the United States of the rights of a citizen of the same.

WILLIAM A. BARBER,
Attorney General.
EDWARD McCRADY,
of Counsel.

APPEAL BOND.

(Filed 23d May 1895)

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. } *In Equity.*

LAWRENCE P. MILLS, COMPLAINANT,
vs.
W. BRIGGS GREEN, as Supervisor of Registration, &c., DEFENDANT.

Know all men by these presents, that we, Edward McCrady & Theodore D. Jervey, of Charleston, S. C., are held and firmly bound unto Lawrence P. Mills, party plaintiff in the above case, in the penal sum of two hundred and fifty dollars ($250), to which payment well and truly to be made and done we bind ourselves and each and every of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at Charleston, S. C., the 23rd day of May A. D. 1895.

Whereas, an appeal has been allowed to W. Briggs Green on his behalf, from the interlocutory order of injunction granted by

Honorable Nathan Goff, United States Circuit Judge, in the above stated case, restraining him as Supervisor of Registration for Richland County and individually from the commission of certain acts mentioned in the Bill of Complaint:

Now the condition of the above obligation is such that if the above bound W. Briggs Green shall prosecute his said appeal to effect and shall answer and pay all costs incurred by him, if he shall fail to make his said appeal good, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and virtue.

EDWARD McCRADY. [L.S.]
THEO. D. JERVEY. [L.S.]

Signed, sealed and delivered in the presence of
LOUIS deB. McCRADY.

STATE OF SOUTH CAROLINA.)
)
CHARLESTON COUNTY.)

Edward McCrady and Theodore D. Jervey severally duly sworn, say, each for himself, that he executed the foregoing bond or obligation and that he is worth more than the sum of two hundred and fifty dollars ($250,) over and above all his debts and liabilities known to him exclusive of property exempt from execution.

EDWARD McCRADY.
THEO. D. JERVEY.

Sworn to and subscribed before me this 23rd day of May A. D. 1895.

T. W. BACOT,
Notary Public for So. Ca.

[L.S.]
Bond approved.

CHARLES H. SIMONTON,
Circuit Judge.

23 May 1895.

CITATION.

(Filed 23d May 1895)

UNITED STATES OF AMERICA—ss.

To Lawrence P. Mills—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Fourth Circuit, to be holden at Richmond in the State of Virginia on the

Fourth Tuesday of May A. D. 1895, pursuant to an appeal filed in the office of the Clerk of the Circuit Court of the United States for the District of South Carolina, wherein W. Briggs Green is appellant and the above named Lawrence P. Mills (to whom this citation is addressed) is appellee, to show cause, if any there be, why the said orders of 16th April 1895 and 8th May 1895, in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

This citation together with said appeal is hereby made returnable on the 28th day of May A. D. 1895.

Witness the Hon. Charles H. Simonton, U. S. Judge, this 23d day of May A. D. 1895.

CHARLES H. SIMONTON,
Circuit Judge.

THE UNITED STATES OF AMERICA.

FOURTH CIRCUIT.

DISTRICT OF SOUTH CAROLINA.

———

I, J. E. Hagood, Clerk of the Circuit Court of the United States for the District of South Carolina aforesaid, do hereby certify that the foregoing 44 pages are a true and correct transcript of all the records and proceedings in the case of Lawrence P. Mills *Complainant, vs.* W. Briggs Green, *Defendant*, pending in the Court aforesaid, in Equity.

Given under my hand and the seal of said Court, at my office, in the city of Charleston, S. C., this the 25th day of May, A. D. 1895.

J. E. HAGOOD,
C. C. C. U. S. Dist. So. Ca.

[SEAL OF COURT.]

DISCREPANCY IN PAGINATION

Or

PAGES MISSING

And

CANNOT BE FOUND

45 *Proceedings of the Circuit Court of Appeals.*

May 31, 1895, motion of appellant to docket and advance the cause was argued before Mr. Chief Justice Fuller, Simonton, circuit judge, and Hughes, district judge, by William A. Barber, attorney general of South Carolina, and Edward McCrady, for the appellant, and Henry N. Obear, attorney for the appellee, resisting the motion.

Same day held that this court has jurisdiction on appeal; cause docketed and advanced for argument June 7, 1895.

Notice of Motion to Dismiss Appeal.

Filed June 7th, 1895.

United States Circuit Court of Appeals for the Fourth Circuit.

LAWRENCE P. MILLS, Complainant, Appellee,
vs.
W. BRIGGS GREEN, Defendant, Appellant.

To William A. Barber and Edward McCrady, attorneys for defendant, appellant:

Please take notice that on the call of this case in the above-entitled court for a hearing the undersigned will move said court, in their court-room, in Richmond, Virginia, to dismiss said appeal upon the ground that said court is without jurisdiction to hear and determine the same.

This 6th day of June, 1895.

OBEAR & DOUGLASS,
Attorneys for Appellant.

Endorsed: "Due service accepted 6th June, 1895. Wm. A. Barber, att'y gen'l, for def't, app'l't."

46 *Motion to Dismiss Appeal.*

Filed June 7, 1895.

United States Circuit Court of Appeals for the Fourth Circuit.

LAWRENCE P. MILLS, Complainant, Appellee,
vs.
W. BRIGGS GREEN, Defendant, Appellant.

And now comes the complainant, Lawrence P. Mills, the appellee herein, by Obear & Douglass, his attorneys, and moves the United States circuit court of appeals for the fourth circuit to dismiss the above-entitled appeal, for the ground that said circuit court of appeals is without jurisdiction to hear and determine said appeal.

OBEAR & DOUGASS,
Attorneys for Appellee.

6th June, 1895.

June 7, 1895, said cause came on to be heard before Mr. Chief Justice Fuller and District Judges Hughes and Seymour, and was argued by William A. Barber, attorney general of South Carolina, and Edward McCrady, for the appellant, and Charles A. Douglass and Henry N. Obear, for the appellee, and submitted with leave until June 11, 1895, to file citations of authorities.

Statement of Opinion.

Filed June 11, 1895.

In United States Circuit Court of Appeals, Fourth Circuit.

W. BRIGGS GREEN, Appellant,
vs.
LAWRENCE P. MILLS. } No. 136.

Appeal from the circuit court of the United States for the
47 district of South Carolina.

Before Fuller, circuit justice; Hughes and Seymour, district judges.

FULLER, *Circuit Justice:*

The judiciary act of March 3, 1891, contemplates prompt decision on appeals such as this, and as we cannot give extended expression to our views at this time, we content ourselves with a brief statement of our conclusions.

Under section 7 of that act, where, upon a hearing in equity in a circuit court an injunction is granted or continued by an interlocutory order or decree, "in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the circuit court of appeals."

By section 5 appeals or writs of error may be taken to the Supreme Court in any case "in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States," but although the constitutionality of a State law may be drawn in question in the circuit court, yet if the case may be disposed of on other grounds, not involving the validity of such law, we think this court has jurisdiction on appeal. Carey *vs.* Railway Company, 150 U. S., 170; United States *vs.* Jahn, 155 United States, 109. If, in the instance of appeals from interlocutory orders, on consideration it should appear that the question of the constitutionality of the law is controlling and must be decided the cause can be remanded to the circuit court that application to the Supreme Court for certiorari may be made. American Construction Company *vs.* Railway Company, 148 United States, 372.

In this case the bill of complaint challenged the constitutionality of certain laws of South Carolina, but the question was raised on the threshold whether the case made was one of equitable cogni-

zance, and this being so, we sustain the jurisdiction and overrule the motion to dismiss.

The jurisprudence of the United States has always recognized the distinction between the law and equity as, under the Constitution, matter of substance as well as of form and procedure. Cates *vs.* Allen, 149 U. S., 451; Mississippi Mills *vs.* Cohn, 150 U. S., 202, 205. It is well settled that a court of chancery is conversant only with questions of property and the maintenance of civil rights. The court has no jurisdiction in matters of a political nature; or to interfere with the duties of any department of Government except under special circumstances and when necessary for the protection of rights of property; or in matters merely criminal or merely immoral, which do not affect any right of property. *In re* Sawyer, 124 U. S., 200; Fletcher *vs.* Tuttle, 151 Ill., 41; Hardesty *vs.* Taft, 23 Md., 513; *Ex parte* Lumsden (S. C.), 19 S. E. Rep., 749.

The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance, and there can be no such case, in the Federal courts, where there is a plain and adequate remedy at law, nor does illegality alone afford ground for equitable interference. Shelton *vs.* Platt, 139 U. S., 591.

Tested by these principles this bill of complaint cannot be maintained for it asserts no threatened infringement of rights of property or civil rights, and no adequate ground for equity interposition.

Being of this opinion, the restraining orders must be reversed, and the cause remanded with directions to dismiss the bill.

48 *Decree.*

Filed June 11, 1895.

In United States Circuit Court of Appeals, Fourth Circuit.

W. Briggs Green, Appellant,
vs.
Lawrence P. Mills. } No. 136.

Appeal from the circuit court of the United States for the district of South Carolina.

This cause came on to be heard on the transcript of the record on an appeal from an order entered by the circuit court of the United States for the district of South Carolina on May 8, 1895, continuing a certain order granted by said court April 16 and filed April 19, 1895, on the bill of complaint herein, whereby appellant was enjoined and restrained "from exercising duties or performing any acts complained of in the said bill of the complainant, either individually or as supervisor of registration for the county of Richland, State aforesaid," and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the said orders of the said circuit court

of April 16 and May 8, 1895, be, and the same are hereby, reversed and the injunction thereby granted and continued dissolved with costs, and that this cause be, and the same is hereby, remanded to the said circuit court with directions to dismiss the bill of complaint.

RO. W. HUGHES, *Judge.*

June 11, 1895.

Mandate.

Issued and transmitted to said circuit court June 17, 1895.

49 UNITED STATES OF AMERICA, *ss:*

Seal United States Circuit Court of Appeals, Fourth Circuit.

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Whereas lately, in the circuit court of the United States for the district of South Carolina, before you or some of you, in a cause between Lawrence P. Mills, complainant, and W. Briggs Green, defendant, wherein the orders of the said circuit court entered in the said cause April 16, and May 8, 1895, are in the words following, to wit:

On hearing the bill in the above-entitled cause, and on motion of Messrs. Obear & Douglass, complainant's solicitors—

It is ordered that the defendant, W. Briggs Green, both individually and as supervisor of registration for Richland county, in the State of South Carolina, be enjoined and restrained until the further order of this court from the commission of any of the acts complained of in the above-entitled bill, a copy of which must be served upon him with this order.

It is further ordered that the said W. Briggs Green do show cause before me at Columbia, S. C., on Thursday, the 2nd day of May, next, why this order should not be continued, or some order of like purport and effect be then granted enjoining and restraining him, both individually and as such supervisor of registration, from the commission of any of the acts complained of in said bill until the final hearing and determination of this cause.

This hearing shall be in the United States circuit court room, Columbia, S. C.

This 16th April, 1895.

Upon reading and filing the return of the respondent herein to the bill of the complainant, and upon hearing the argument of all the counsel of the parties to this action—

Now, on motion of Obear & Douglass, attorneys for the complainant—

It is ordered: That the restraining order heretofore granted by this court, bearing date the 16th day of April, 1895, enjoining and restraining the said respondent from exercising duties or performing any acts complained of in the said bill of the complainant,

either individually or as supervisor of registration for the county of Richland, State aforesaid, be, and the same is hereby, continued, subject to the final determination of the issues involved in this case or until the further order of this court.

Dated at Columbia, S. C., this the 8th day of May, 1895.

50 As by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the fourth circuit by virtue of the appeal of the said W. Briggs Green, agreeably to the act of Congress in such case made and provided, fully and at large appears;

51 And whereas, in the present term of May, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before the said United States circuit court of appeals for the fourth circuit on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the said orders of the said circuit court of April 16 and May 8, 1895, be, and the same are hereby, reversed and the injunction thereby granted and continued dissolved, with costs, and that this cause be, and the same is hereby, remanded to the said circuit court, with directions to dismiss the bill of complaint.

June 11, 1895.

52 You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety-five.

HENRY T. MELONEY,
Clerk of the U. S. Circuit Court of Appeals
for the Fourth Circuit.

Costs of Appellant.

Clerk	$24 55
Printing record	50 60
Attorney	20 00
	$95 15

53 *Petition for Appeal and Order Thereon.*

Filed September 4, 1895.

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court of Appeals, Fourth Circuit. In Equity.

LAWRENCE P. MILLS, Complainant,
vs.
W. BRIGGS GREEN, as Supervisor of Registration for Richland County, S. C., and Individually, Defendant.

To the honorable the judges of the Supreme Court of the United States:

Lawrence P. Mills, a party to the above-entitled cause, presents and files this his petition for an appeal to the Supreme Court of the United States from the decree of the circuit court of appeals for the fourth circuit, filed the 11th day of June, 1895, reversing the interlocutory order of injunction passed by Judge Goff in the cause and directing that said cause be remanded to the circuit court of the United States for the district of South Carolina, with instructions to dismiss the bill of complaint therein.

Hereto annexed and herewith filed with the clerk of said circuit court of appeals is an assignment of errors to the said decree, which sets out separately and particularly each error asserted and intended to be urged.

OBEAR & DOUGLASS,
Attorneys for Complainant, Lawrence P. Mills.

54 Prayer of the petition granted and appeal allowed this 23 day of August, 1895.

JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

Fourth Circuit. In Equity. In the Circuit Court of Appeals.

UNITED STATES OF AMERICA, }
District of South Carolina. }

LAWRENCE P. MILLS, Complainant,
vs.
W. BRIGGS GREEN, as Supervisor of Registration for Richland County, S. C., and Individually, Defendant.

Assignment of Errors.

And now comes Lawrence P. Mills, complainant in the above-entitled cause, and excepts to the order and decree of the circuit court of appeals for the fourth circuit, filed the 11th day of June, 1895, reversing the interlocutory orders of injunction passed by his honor

Judge Nathan Goff in this cause and directing that said cause be remanded to the circuit court of the United States for the district of South Carolina, with instructions to dismiss the bill of complaint therein:

1. Because the said circuit court of appeals held that said court has jurisdiction on appeal to hear and determine this cause.

2. Because the said circuit court of appeals assumed jurisdiction to hear and determine on appeal this cause, notwithstanding the said cause is one in which a law of the State of South Caro-
55 lina is claimed to be in contravention of the Constitution of the United States.

3. Because the said circuit court of appeals held that the bill of complaint in this cause asserted no threatened infringement of property or civil rights.

4. Because the said circuit court of appeals held that the complainant, Lawrence P. Mills, had a plain and adequate remedy at law.

5. Because the said circuit court of appeals held that the bill of complaint in this cause did not allege a cause cognizable in a court of equity.

6. Because the said circuit court of appeals directed that the orders of his honor Judge Goff, of date April 16th, 1895, and May 8th, 1895, made in this cause be reversed and the injunction thereby granted and continued be dissolved, and that the cause be remanded to the circuit court of the United States for the district of South Carolina, with directions to dismiss the bill.

OBESR & DOUGLASS,
Attorneys for Complainant.

Appeal Bond.

Filed September 4, 1895.

UNITED STATES OF AMERICA, }
District of South Carolina. }

Fourth Circuit. In Equity.

LAWRENCE P. MILLS, Complainant, }
vs. }
W. BRIGGS GREEN, Defendant. }

Know all men by these presents that we, Lawrence P. Mills and George W. Murray, R. J. Palmer and S. J. Miller, are
56 held and firmly bound unto W. Briggs Green, party defendant in the above case, in the penal sum of two hundred and fifty dollars; to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Columbia, S. C., the 12th day of July, A. D. 1895.

Whereas an appeal has been allowed to Lawrence P. Mills on his behalf from the order and decree of the circuit court of appeals for the fourth circuit, filed the 11th day of June, 1895, reversing the interlocutory order of injunction passed by Judge Goff and directing that the said cause above entitled be remanded to the circuit court for the district of South Carolina, with instructions to dismiss the bill of complaint therein:

Now, the condition of the above obligation is such that if the above-bound Lawrence P. Mills shall prosecute his said appeal to effect and shall answer and pay all costs incurred by him if he shall fail to make his said appeal good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

LAWRENCE P. MILLS. [L. S.]
GEO. W. MURRAY. [L. S.]
R. J. PALMER. [L. S.]
S. J. MILLER. [L. S.]

Signed, sealed, and delivered in presence of—
C. A. DOUGLASS.

STATE OF SOUTH CAROLINA, }
County of Richland. }

G. W. Murray, R. J. Palmer, and S. J. Miller, being duly sworn, severally say that he is one of the signers to the above bond;
57 that he is worth double the amount of said bond over and above all his debts, liabilities, and homestead exemptions.

GEO. W. MURRAY.
R. J. PALMER.
S. J. MILLER.

Sworn to before me this the 12th day of July, 1895.

E. S. DOUGLASS,
Notary Public, of S. C.

This bond approved August 23, 1895.

JOHN M. HARLAN,
Asso Justice Sup. Ct. U. S.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true and full transcript of the record and proceedings of the said circuit court of appeals in the therein-entitled cause.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals, at Richmond, this 16th day of September, A. D. 1895.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Circuit.

58 UNITED STATES OF AMERICA, *ss*:

To W. Briggs Green, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the second Monday of October, A. D. 1895, pursuant to an appeal filed in the office of the clerk of the circuit court of appeals for the fourth circuit, wherein Lawrence P. Mills is appellant and the above-named W. Briggs Green (to whom this citation is addressed) is appellee, to shew cause, if any there be, why the decree and order of the said circuit court of appeals, filed on the 11th day of June, 1895, in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

This citation, together with said appeal, is hereby made returnable on the 20th day of September, A. D. 1895.

59 Witness the Honorable John M. Harlan, one of the justices of the said Supreme Court, this 23 day of August, A. D. 1895.

JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

60 [Endorsed:] 136. United States of America, district of South Carolina. In the C. C. A. Lawrence P. Mills, complainant, *vs.* W. Briggs Green, individually and as supervisor of registration, defendant. Citation. Obear & Douglass, att'ys for appellant. Original.

[Endorsed:] Entered in civil docket F, 73, Sept. 7th, 1895. J. P. Hunter, U. S. marshal (per C.).

Marshal's Costs.

Entry	25
Service	2 00
	$2 25

UNITED STATES MARSHAL'S OFFICE,
CHARLESTON, S. C., 9 *Sept.*, 1895.

I hereby depute Robert E. Baughman to execute the within process.

J. P. HUNTER,
United States Marshal.

Return of Service.

UNITED STATES OF AMERICA, }
District of South Carolina. }

Robert E. Baughman, deputy U. S. marshal, being first duly sworn, says that he served the within citation on W. Briggs Green, the defendant therein named, at Columbia, S. C., by delivering to him personally a copy thereof, at the same time exhibiting to him

this original, on this 9th day of September, A. D. 1895, and that he knows the said W. Briggs Green to be the defendant therein named, and that deponent is not a party to said suit.

ROBT E. BAUGHMAN,
Deputy Marshal.

Subscribed and sworn to before me this 9th day of Sept., A. D. 1895.

JNO. BANCKETT, [L. S.]
U. S. Com'r for S. Ca. District.

Endorsed on cover: Case No. 16,022. U. S. circuit court of appeals, fourth circuit. Term No., 732. Lawrence P. Mills, appellant, *vs.* W. Briggs Green. Filed September 19, 1895.

No. 4 32
159 U.S. 651

United States Circuit Court of Appeals.

FOURTH CIRCUIT.

No. 136.

W. Briggs Green, Appellant, *vs.* Lawrence P. Mills.	Appeal from the Circuit Court of the United States for the District of South Carolina.

[Argued June 7, 1895. Decided June 11, 1895.]

Before the CHIEF JUSTICE; HUGHES and SEYMOUR, District Judges.

WM. A. BARBER, Attorney General South Carolina; EDWARD MCCRADY for Appellant; H. N. OBEAR, CHARLES A. DOUGLASS for Appellee.

This was a bill of complaint filed in the Circuit Court of the United States for the District of South Carolina April 19, 1895, by Lawrence P. Mills, described as "a citizen of the State of South Carolina and of the United States," against W. Briggs Green, described as "a citizen of said State and the United States," and exhibited on behalf of complainant and all other citizens of the county of Richland, in the State of South Carolina, circumstanced like himself, and too numerous to be made parties; alleging that complainant was twenty-one years of age February 4, 1895; that he is a resident of ward 4, precinct of Columbia, in said county and State; that he is a male citizen of the United States; that he

has resided in the State of South Carolina for more than one year preceding the last general election in that State, and in the county of Richland for more than sixty days prior to the said general election. That complainant is an elector of the State of South Carolina, possessing all the qualifications of an elector of the most numerous branch of the State Legislature, provided by the State Constitution, and that he is subject to none of the disqualifications set forth in said Constitution, and that he is under the Constitution and laws of the United States duly qualified to vote at all Federal and State elections held in said ward, county and State.

The bill then set forth Section 90 of the General Statutes of South Carolina of 1882, as follows: "All electors of the State shall be registered as hereinafter provided; and no person shall be allowed to vote at any election hereafter to be held unless registered as hereinafter required;" and Section 132 of the Revised Statutes of South Carolina of 1893 to the same effect: "All electors of this State shall be registered, and no person shall be allowed to vote at any election thereafter to be held unless he shall have heretofore registered in conformity with the requirements of Chapter 7 of the General Statutes of 1882, and acts amendatory thereof, or shall be registered as herein required." And also Section 94 of the General Statutes of 1882, providing: "When the said registration (in certain books to be provided him and made in the manner provided for in Section 93) shall have been completed the books shall be closed and not reopened for registration except for the purposes and as hereinafter mentioned until after the general election for State officers. After the said next general election the books shall be opened for the registration of such persons as shall thereafter become entitled to register on the first Monday in each month to and until the first Monday in July, inclusive, preceding the following general election, upon which last named day the same shall be closed and not reopened for registration until after the said general election, and ever after the said books shall be opened for the registration of such electors, and on the days above mentioned, until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place;" and in Section

137 of the said Revised Statutes of 1893 it is provided: "After every general election the registration books shall be opened for registration of such persons as shall thereafter become entitled to register on the first Monday in each month until the first day of July preceding a general election, when the same shall be closed until such election shall have taken place."

And also Section 97 of the General Statutes of 1882 in the following words: "Any person coming of age and becoming qualified as an elector may appear before the supervisor of registration on any day on which the books are opened as aforesaid and take oath as to his age and qualification, as hereinbefore provided, and if the supervisor find him qualified he shall enter his name upon the registration book of the precinct wherein he resides."

It was further alleged "that in and by the requirements of said registration enactments of the Government of the State of South Carolina it is provided that the respective supervisors of registration in the several counties shall issue to the voter when registered a certificate of registration, and that said voter shall present the same at the polls to the managers of election, and that no one shall be allowed to vote at any election to be held in the said State unless his certificate of registration as aforesaid is exhibited at the time and in the manner aforesaid.

"And it is further required in and by the said alleged enactments that in case a voter or elector shall remove from one county to another in said State, or from one precinct to another in the same county, or from one residence to another in the same precinct, that he shall obtain a transfer and a renewal certificate.

"And it is further provided in said enactments that in the event an elector shall lose his said certificate of registration he must obtain a renewal thereof upon furnishing evidence satisfactory to the registrar of the said county wherein he resides that his said certificate has been mislaid or lost, and that the same has not been wilfully or intentionally disposed of." And it was averred "that by the provisions and requirements of said enactments the elector failing for any reason to comply with any of the provisions aforesaid is denied the right of suffrage both in Federal and State elections;" and "that

the provisions of the said enactments fixing the time for registration and the closing of the books for that purpose on the 1st day of July preceding every election, and the many and divers provisions, requirements and conditions set out in the various and sundry sections of said alleged act, were intended and that they in effect do abridge, impede and destroy the suffrage of the citizen both of the State and of the United States."

The bill further averred the passage on the 24th day of December, 1894, by the government of the State of South Carolina of an act to provide for calling a Constitutional Convention by section 4 of which it was declared who should be entitled to vote for delegates to the said Constitutional Convention; and in addition to the qualifications prescribed for electors by the Constitution of the State of South Carolina, a further qualification was provided, to-wit: That the elector be "duly registered as now required by law, or who, having been entitled to register as a voter at the time of the general registration of electors in the State which took place in the year of our Lord 1882, or at any time subsequent thereto, failed to register at such time required by law, or who has become a citizen of this State and who shall register as hereinafter provided in such cases."

Sections 6 and 7 of this act were set forth as follows: "That on the first Monday of March, in the year of our Lord, 1895, the supervisor of registration of each county shall, at the county seat thereof, open his books of registration, and shall hold the same open for ten consecutive calendar days thereafter, except Sundays, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, except Charleston, Beaufort and Richland counties, where the said books shall be kept open from 10 o'clock in the forenoon to 6 o'clock in the afternoon, during which time any elector then or theretofore at any time entitled to register as a qualified voter, or who has become a citizen of this State, shall be, during the time herein fixed by law for registration, entitled to register as such, as hereinafter provided; and any elector having been heretofore duly registered, or having since changed his residence, or having lost his certificate, shall be entitled to have the same transferred or renewed, as now provided by law."

"Any elector who shall have been entitled to regis-

ter at the general registration in the year of our Lord, 1882, or at any time subsequent thereto, and who failed to register at such time as required by law, and who shall make application under oath in accordance with the printed form to be prepared by the Attorney General, setting forth in each case the fact, to-wit: the full name, age, occupation and residence of the applicant at the time of the said general registration, or at any time thereafter, when the said applicant became entitled to register, and the place or places of his residence since the time he became entitled to register, which affidavit shall be supported by the affidavits of two reputable citizens who were each of the age of 21 years on the 13th day of June, A. D. 1882, or at the time the said applicant became entitled thereafter to register, or any elector who has become a citizen of this State, by moving into the same and his place of residence since living in the State and who shall make application under oath, stating the time of his moving into the State and his place of residence since living in the State, which application shall be supported by the affidavit of two reputable citizens, who were 21 years of age at the time the applicant became a resident of this State, such applicant shall be allowed to register as a voter and to have issued to him a certificate as a duly qualified elector in the manner and form now provided by law, and be entitled to vote at said election for delegates to said convention."

The bill then charged that these sections so limited, abridged and qualified the privilege of registration that they resulted in a practical denial of the right to vote to those electors who, by the operation of the provisions of the General Statutes of 1882 and Revised Statutes of 1893, are now unregistered; and that they were "so interwoven with, and are such integral parts of the whole alleged registration laws of the State of South Carolina, that if the same be declared unconstitutional and void, as herein prayed, the whole enactments in regard to regtration are likewise void." And it was charged that said sections were in violation of the Constitution of the State of South Carolina and of Section 2, Article I, section 1 of Article of Amendment XIV, and section 1 of Article of Amendment XV of the Constitution of the United States.

The bill continued and concluded as follows:

"10. By Section 2 of the aforesaid Act of 1894 it is provided that the election of delegates to the said Constitutional Convention shall be held on the third Tuesday in August, 1895, that the said Convention shall assemble on the second Tuesday of September, 1895, that such Convention is called for the purpose of revising, amending or changing the Constitution of said State, and when assembled will have full power to revise, alter, abridge, curtail and qualify the right of your orator and of all citizens of the said State of South Carolina to vote for the members of the most numerous branch of the State Legislature, and thereby to revise, alter, abridge and curtail the qualifications now requisite to enable your orator to vote at all Federal elections as now imposed by the Constitution of the United States.

11. That W. Briggs Green has been appointed to the office of supervisor of registration for Richland county aforesaid, under and in pursuance of the said unconstitutional registration laws—that he is now exercising the duties prescribed by the same, and your orator has been informed and believes that he intends to continue so to do, and, furthermore, he specifically intends to furnish and deliver to the several boards of managers for the several precincts in Richland county aforesaid, to be hereafter appointed, to hold the election of delegates to the said Constitutional Convention, certain paper writings purporting to be the registration books aforesaid of the several precincts to be used by said managers at said approaching election.

12. Your orator further shows that under and by virtue of the said unconstitutional registration laws the supervisors appointed thereunder are required to continue said partial, void and illegal registration on the first Monday in May and June and July, 1895, and that after the first day of July, 1895, they are directed by Section 8 of the Act of 1894 to 'furnish the managers at each precinct with one of the registration books for such precinct, and no elector shall be entitled to vote whose name is not registered as hereinbefore or already provided by law, and who does not produce his registration certificate at the polls where he offers to vote.'

13. That your orator failed to register at the regis-

tration made after the general election of 1888, or to be registered during the ten days in March, 1895, provided for in said Act of 1894, because, although he made repeated and persistent efforts to become registered, he found himself unable to comply with the unreasonable, unnecessary and burdensome rules, regulations and restrictions prescribed by said unconstitutional registration laws as conditions precedent to his right to register, and your orator has never been allowed to vote at any Federal or State election of the said State of South Carolina.

14. That your orator is desirous of voting for delegates to the aforesaid Constitutional Convention at the election prescribed by the Act of 1894 for the purpose; that the paper writings purporting to be books of registration now in the hands of the said defendant do not and will not contain the name of your orator as a registered voter for the reasons hereinbefore stated; that your orators and others like circumstanced with him will not be permitted to vote at said special election by the managers thereof unless their names be found upon the books of registration, and they can produce the registration certificates hereinbefore mentioned; that if the said defendant be permitted to continue the aforesaid illegal, partial and void registration and be allowed to turn over to the managers of election for the aforesaid county of Richland (when appointed) said paper writings purporting to be books of registration for the several precincts in said county your orator will be deprived of his right to vote at said election, and grievous and irreparable wrong and damage will be done to your orator and a large class of citizens like circumstanced with him, which can be prevented only by the interposition of this court by way of restraining the said defendant from the performance of any of the acts hereinbefore referred to. To the end, therefore, that your orator may have full, perfect and sufficient relief in the premises, may it please your honors to grant unto your orator a writ of injunction restraining and enjoining the said defendant individually and as supervisor of registration from the performance of any of the acts hereinfore complained of, and that your orator may have such other and further relief in the premises as may be just and reasonable."

Then followed the prayer for process.

The bill was sworn to by complainant as "true to the best of his knowledge and belief;" and, on preliminary application, the following order was entered:

"It is ordered that the defendant, W. Briggs Green, both individually and as supervisor of registration for Richland county, in the State of South Carolina, be enjoined and restrained until the further order of this court from the commission of any of the acts complained of in the above entitled bill, a copy of which must be served upon him with this order.

"It is further ordered that the said W. Briggs Green do show cause before me at Columbia, S. C., on Thursday, the 2nd day of May, next, why this order should not be continued, or some order of like purport and effect be then granted enjoining and restraining him, both individually and as such supervisor of registration, from the commission of any of the acts complained of in said bill until the final hearing and determination of this cause.

"This hearing shall be in the United States Circuit Court-room, Columbia, S. C."

Subpoena was issued returnable on the first Monday of June. On May 2, 1895, cause was shown by defendant under the rule, defendant stating among other things:

"1. That he is supervisor of registration for Richland county, in the State of South Carolina, and as such is not amenable to the jurisdiction of the court for his conduct in his political capacity aforesaid; that the matters, facts and things alleged and complained of in the said bill, and upon which the injunction has been improvidently granted, are all matters relating to the political duties of the office.

That this is in effect a suit against the State of South Carolina, in violation of the 11th Amendment to Constitution of United States, and this court has no jurisdiction.

2. That he submits that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this honorable court.

3. That he submits the bill presents no case upon which the jurisdiction of a Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged, if so be that the allegations are true.

4. That the bill is totally defective for the purposes of the motion in its allegations and in the verification, in this that there is no sufficient averment of irreparable injury and statement of facts supporting it and that the material facts on which the injunction is sought are not positively sworn to by the complainant."

On May 8, 1895, the cause having been argued upon bill and return, the Circuit Court filed an opinion, (reported 67 Fed. Rep., 818), and entered the following order: "It is ordered: That the restraining order heretofore granted by this court, bearing date the 16th day of April, 1895, enjoining and restraining the said respondent from exercising duties or performing any acts complained of in the said bill of the complainant, either individually or as Supervisor of Registration for the county of Richland, State aforesaid, be, and the same is hereby, continued, subject to the final determination of the issues involved in this case until the further order of this court."

From this order an appeal was prayed and allowed to this court, errors being duly assigned, covering the points made on the return. Objections to the docketing of the case were made and overruled, and the appeal was heard June 7, and decree entered June 11, 1895, reversing the order of the Circuit Court, dissolving the injunction, and remanding the case with directions to dismiss the bill.

Mr. Chief Justice Fuller delivered the opinion of the court:

It is contended on behalf of appellee that jurisdiction of this appeal cannot be entertained because if the case went to final decree an appeal therefrom would lie only to the Supreme Court.

Under section 7 of the judiciary act of March 3, 1891, where, upon a hearing in equity in the Circuit Court, an injunction is granted or continued by an inter-

locutory order or decree, "in a cause in which an appeal from a final decree may be taken under the provisions of this act to the Circuit Court of Appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the Circuit Court of Appeals."

By section 5 of that act appeals or writs of error may be taken directly to the Supreme Court "in any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision;" "in any case that involves the construction or application of the Constitution of the United States;" "in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

It was early held in *McLish* v. *Roff*, 141 U. S., 661, that the act gave to a party to a suit in the Circuit Court where the question of the jurisdiction of the court over the parties or subject matter was raised and put in issue upon the record at the proper time and in the proper way, the right to a review by the Supreme Court, after final judgment or decree against him, of the decision upon that question only, or by the Circuit Courts of Appeals on the whole case. *Maynard* v. *Hecht*, 151 U. S., 324.

And in *Carey* v. *Railway Co.*, 150 U. S., 170, it was ruled that in order to hold an appeal maintainable under the second of the above-named classes, the construction or application of the Constitution of the United States must be involved as controlling, although on appeal or error all other questions would be open to determination, if inquiry were not rendered unnecessary by the ruling on that arising under the Constitution. *Horner* v. *United States*, 143 U. S., 570.

In *United States* v. *Jahn*, 155 U. S., 109, the Supreme Court decided that if the question of jurisdiction is in issue, and the jurisdiction sustained, and judgment or decree on the merits is rendered in favor of the plaintiff, then the defendant can elect either to have the question certified and come directly to the Supreme Court or to carry the whole case to the Circuit Court of Appeals, where the question of jurisdiction can be certified by that court.

In view of these and other cases, we are of opinion that where the jurisdiction is not in issue, but the question of the constitutionality of a State law is raised and must necessarily be decided in the disposition of the case, there the case on final decree should be taken directly to the Supreme Court. But where the jurisdiction depends on the existence of a Federal question, which is controverted, the jurisdiction sustained and the case goes to decree on the merits, the defendant may take the whole case to the Circuit Court of Appeals. Whether that court, if the conclusion were reached that the constitutional question was controlling in the premises, should remand the case to the Circuit Court or may certify the question to the Supreme Court, we are not called upon to determine. Here the jurisdiction of the Circuit Court rested on the existence of a Federal question, namely, the validity of the State laws challenged as in contravention of the Constitution and Laws of the United States; but, conceding the jurisdiction, the question arose on the threshold whether the case made or attempted to be made was one of equitable cognizance, and we think that upon the final decree an appeal would lie to this court, whether the bill were dismissed on final hearing on that ground or otherwise. The motion to dismiss will, therefore be overruled.

The jurisprudence of the United States has always recognized the distinction between common law and equity as, under the Constitution, matter of substance as well as of form and procedure. And the distinction has been steadily maintained, although both jurisdictions are vested in the same courts. *Fenn* v. *Holme*, 21 How., 481, 484; *Thompson* v. *Railroad Companies*, 6 Wall., 134; *Cates* v. *Allen*, 149 U. S., 451; *Mississippi Mills* v. *Cohn*, 150 U. S., 202, 205.

It is well settled that a court of chancery is conversant only with matters of property and the maintenance of civil rights. The court has no jurisdiction in matters of a political nature; nor to interfere with the duties of any department of government unless under special circumstances and when necessary to the protection of rights of property; nor in matters merely criminal or merely immoral which do not affect any right of property. *In re Sawyer*, 124 U. S., 200; *Luther* v. *Borden*, 7 How., 1; *Mississippi* v. *Johnson*, 4 Wall., 475; *Georgia*

v. *Stanton*, 6 Wall., 50; *Holmes* v. *Oldham*, 1 Hughes, 76.

Neither the legislative nor the executive department, said Chief Justice Chase in *Mississippi* v. *Johnson*, "can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance."

"The office and jurisdiction of a court of equity," said Mr. Justice Gray in *In re Sawyer*, "unless enlarged by express statute, are limited to the protection of rights of property."

To assume jurisdiction to control the exercise of political powers, or to protect the purely political rights of individuals, would be to invade the domain of the other departments of government or of the courts of common law.

Similar views have been repeatedly expressed by State tribunals of high authority. Thus in *Fletcher* v. *Tuttle*, 151 Ill., 41, the Supreme Court of Illinois say: "The question then is, whether the assertion and protection of political rights, as judicial power is apportioned in this State between courts of law and courts of chancery, are a proper matter of chancery jurisdiction. We would not be understood as holding that political rights are not a matter of judicial solicitude and protection, and that the appropriate judicial tribunal will not, in proper cases, give them prompt and efficient protection, but we think they do not come within the proper cognizance of courts of equity." *In re Sawyer*; *Georgia* v. *Stanton*; *Sheridan* v. *Colvin*, 78 Ill., 237; *Dickey* v. *Reed*, 78 Ill., 261; *Harris* v. *Schryock*, 82 Ill., 119; and many other cases are cited, and the court continues: "Other authorities of similar import might be referred to, but the foregoing are amply sufficient to show that, wherever the established distinctions between equitable and common law jurisdiction are observed, as they are in this State, courts of equity have no authority or jurisdiction to interpose for the protection of rights which are merely political, and where no civil or property right is involved. In all such cases the remedy, if there is one, must be sought in a court of law. The extraordinary jurisdiction of courts of chancery cannot, therefore, be invoked to protect the right of a citizen to vote or to be voted for at an election, or his right to be a can-

didate for or to be elected to any office. Nor can it be invoked for the purpose of restraining the holding of an election, or of directing or controlling the mode in which, or of determining the rules of law in pursuance of which, an election shall be held. These matters involve in themselves no property rights, but pertain solely to the political administration of government. If a public officer, charged with political administration, has disobeyed or threatens to disobey the mandate of the law, whether in respect to calling or conducting an election or otherwise, the party injured or threatened with injury in his political rights is not without remedy. But his remedy must be sought in a court of law, and not in a court of chancery."

In *Hardesty* v. *Taft*, 23 Md., 513, where application was made for an injunction to prevent the use of a register of voters prepared for a certain county, the Court of Appeals of Maryland observed: "On this branch of the inquiry it seems to the court very clear that a court of equity cannot be invoked to prevent the performance of political duties like those committed to the officers of registration under the law. The wilful, fraudulent or corrupt refusal of a vote by judges of election, or a like denial of registration by the officer appointed to register votes (which is the same thing), can be adequately compensated for in damages at law. *Bevard* v. *Hoffman*, 18 Md., 484. The writ of injunction will not be awarded in doubtful or new cases not coming within well established principles of equity. *Bonaparte* v. *Camden and Amboy R. R. Co.*, 1 Bald., 218. Each voter has a separate and distinct remedy for the wilfully improper deprivation of his vote; and the joinder of others like circumstanced or injured as complainants in equity, on the ground of avoiding a multiplicity of suits, will not avail to afford equitable relief. To interfere in the mode asked for by the complainants would be to stop a popular election in one portion of the State, and thus arrest, as to it, the wheels of government. For irregularities in the conduct of an election, for receiving illegal or rejecting legal votes, and for the correction of consequences resulting therefrom, the law provides appropriate remedies and modes of procedure. Such matters are not the subjects of equitable jurisdiction."

The general doctrine as to public officials is thus

stated by the New York Court of Appeals in *People* v. *Canal Board*, 55 N. Y., 393. "A court of equity exercises its peculiar jurisdiction over public officers to control their action only to prevent a breach of trust affecting public franchises, or some illegal act under color or claim of right affecting injuriously the property rights of individuals. A court of equity has, as such, no supervisory power or jurisdiction over public officials or public bodies, and only takes cognizance of actions against or concerning them when a case is made coming within one of the acknowledged heads of equity jurisdiction."

Nor will equity interfere by injunction to restrain persons from exercising the functions of public offices, on the ground of the illegality of the law under which their appointments were made, but will leave that question to be determined by a legal forum. The doctrine is clearly established that courts of equity will not thus interfere to determine questions concerning the appointment or election of public officers or their title to office, such questions being of a purely legal nature and cognizable only by courts of law. High on Injunctions (3d Ed.), §§ 1312 *et seq*, and cases cited. And see *Hagner* v. *Heyberger*, 7 Watts & S., 104; *Smith* v. *McCarthy*, 56 Pa. St., 359; *Smith* v. *Myers*, 109 Ind., 1; *Peck* v. *Weddell*, 17 Ohio St., 271; *Kemp* v. *Ventulett*, 58 Ga., 419.

The rule is not otherwise in South Carolina. The Supreme Court of that State has decided upon a similar application for a like injunction, made, as would appear, by this same complainant, that the relief asked "is not the appropriate remedy for the grievance set out." *Ex parte Mills*, 41 S. C., 554.

Tested by these principles, this bill of complaint cannot be maintained, for it seeks on behalf of individuals to restrain the exercise of governmental powers and asserts no threatened infringement of rights of property or civil rights, and no recognized ground of equity interposition.

No discrimination on account of race, color or previous condition of servitude is charged, or pointed out as deducible on the face of the acts in question. No specific application to the defendant as supervisor to register complainant is alleged, but it is said that complain-

ant has failed to register because in spite of repeated and persistent efforts to that end he found himself unable to comply with the provisions of the law in that behalf. In this regard, the gravamen of the bill is that, although the legislature might require registration under reasonable restrictions as proof of the possession of the qualifications prescribed by the Constitution, which is indeed made the duty of the General Assembly by that instrument (Const. S. C., Art. VIII § 3), the requirements of these acts are such as to materially abridge and impair the exercise of the elective franchise and impose additional qualifications to those prescribed; and that, therefore, the acts are invalid as in contravention of the Constitutions of the State and of the United States. But if this were true it would not follow that complainant would have a *locus standi* in equity.

The bill is brought to restrain the registering officer from discharging, at all, duties imposed upon him by law in respect of the public lest complainant and other individuals similarly situated might thereafter be deprived of a political right because of alleged inability to comply with legislative requirements, which he contends are invalid for that reason. We repeat that the action sought to be enjoined is political and governmental, and it is not pretended that any right of property or civil right is threatened with infringement thereby.

This being so, we are clearly of opinion that no ground of equitable cognizance exists, and, although the appeal is from interlocutory orders, yet, as we entertain no doubt that such a bill cannot be maintained, we are constrained in reversing these orders, to remand the cause with a direction to dismiss the bill.

And it is so ordered.

United States Circuit Court of Appeals.

FOURTH CIRCUIT.

At Richmond, Va., June 11th, 1895.

No. 136.

W. Briggs Green, Appellant, v. Lawrence P. Mills, Appellee. } Appeal from Circuit Court, District of South Carolina.

CONCURRING OPINION OF JUDGE HUGHES.

This case was heard by the Chief Justice, Judge Seymour and myself, on Friday last, the 7th inst. We thought it was of a character to call for an early decision, and it was determined, after adjournment on Friday, that the decision should be announced to-day, and a decree entered. The case was exhaustively argued at the bar, and nothing can be gained by waiting a further time for the examination of briefs.

We are of opinion that the preliminary injunction which was granted in the case ought to be dissolved and the bill dismissed. A decree to that effect, prepared by the Chief Justice, will be entered at once. The opinion of the court on the important questions presented by the record will be prepared by the Chief Justice and filed and reported as soon as practicable.

I have thought that in the mean time it was due to the public and might not be improper in me to present at once some of the considerations which have led me to the opinion that the injunction of the Circuit Court below should not have been granted.

I therefore submit what follows. I have had no opportunity of presenting it to the other judges who sat with me, and am solely responsible for the views expressed.

STATEMENT.

This bill is brought by the complainant on his own behalf and "on behalf of other citizens of the county of Richland, in the State of South Carolina and the United States," circumstanced like himself.

It sets out that he is twenty-six years of age and that he is entitled to be registered as a citizen and voter. It describes, by quotation, in considerable detail, sundry provisions of the registration laws of South Carolina now in force. It charges that these provisions violate certain clauses of the State Constitution in two respects, viz: 1st by requiring the voter always to be in possession of his certificate of registration and to present it when offering to vote; and 2nd by allowing only ten days in each year (in the month of March) for the registration of voters who have failed to register at the times provided by law for registration at periods anterior to those ten days. It charges that the registration laws complained of by adding a compliance with these two qualifications as necessary to the exercise of the right of suffrage—these being qualifications which are not required by the State constitution—thereby violate the State constitution. It adds the charge that these two requirements also violate the Constitution of the United States, inasmuch as section 2 of Article 1 of that instrument provides that electors for members of Congress "in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

The bill alleges that complainant failed to register at the times designated by law and allowing ten days set apart for that purpose in March, 1895, for those who had not previously registered: because, although he had made repeated efforts to become registered, he found himself unable to comply with the unreasonable, unnecessary, and burdensome rules, regulations and restrictions prescribed by the alleged unconstitutional registration laws, as conditions precedent to his right to register. He complains that in consequence of his having thus failed to be registered, he has never been allowed to vote at any State or any federal election in South Carolina.

The bill alleges that the defendant, Green, has been appointed supervisor of registration for Richland county

under these unconstitutional laws; is exercising the duties prescribed by them, and intends to deliver to the managers of elections in Richland county the registration books which he is preparing, to be used by them in deciding upon the right of citizens to vote, among other elections, at the first next ensuing election to be held in South Carolina, which will be one to be held in August next for members of a State convention called to frame a new state constitution.

The bill alleges, in general terms, that the registration laws of South Carolina complained of violate, as before described, Section 2 of Article 1 of the National Constitution; and are also "in violation of Section 1 of Article 14, and Section 1 of Article 15, and of divers other Sections and Articles of the said instrument." As there are but seven Articles in the original Constitution of the United States, the presumption is that the bill has reference to the 14th and 15 Amendments (not Articles) of the National Constitution.

The complainant therefore prays the court to grant a writ of injunction restraining and enjoining the defendant, supervisor of registration, Green, individually and officially, from the performance of any of the acts required of him by the registration laws complained of, and for other relief. The court below granted an order temporarily enjoining and restraining supervisor Green from the commission of any of the acts complained of in the bill; and granted at a later day an order restraining and enjoining this supervisor from exercising duties or performing any acts complained of in the bill until the further order of the court.

From this order appeal is taken to this court.

Opinion.

Hughes, J.

There is nothing in the record to show that the complainant is a man of color, or that those for whom he sues are colored persons. The bill contains no allegation that the provisions of law complained of were devised against the complainant, or those for whom he sues, on account of their race, color or previous condition of servitude. There is nothing in the averments of the bill from which it may naturally, or must necessarily,

be inferred that the complainant and those for whom he sues are citizens of color. There are no averments in the bill which show that the case falls within the purview of the Fifteenth Amendment of the Constitution of the United States.

Nor does the bill contain any allegations which raise a federal question under that clause of the Fourteenth Amendment which forbids a State "to deny to any person the equal protection of the laws." It charges that the effect of the provisions of the registration acts complained of is to give unequal facilities of registration to different classes of citizens; but it does not point out how this is so. It leaves the discrimination as to the privilege of registering, if there be discrimination, to inference, and to research in sources other than its own averments. It charges that the provisions of laws complained of discriminate, but does not describe the manner of discrimination, or define the classes affected *pro* or *con*; nor does it show that the laws complained of in discriminating between classes as to the privilege of registering granted by them violate that clause in the Fourteenth Amendment which forbids a State "to deny to any person within it the equal *protection* of the laws." It confounds *privilege* with *protection*.

The bill has no reference to a federal election in setting out complainant's case. The gravamen of the bill contemplates only a State election to be held for members of the State convention called to convene in August next. It is not shown that any federal election is to be held in the State of South Carolina before November, 1896.

To the bill thus described, and to the orders of injunction granted by the court below in pursuance of its prayers, several objections are urged in behalf of the State of South Carolina. In what follows I shall consider but one of these.

I regret that I cannot concur in the ruling of the Circuit Court rendered on circuit in this case, in which it was held that the court had jurisdiction to restrain a county supervisor of registration in the performance of his duties under the election laws of South Carolina.

The division of our government into the legislative, executive and judicial departments is a distinguishing feature of our American polity, and it is essential to its

existence that each of these departments shall be independent of the other. It is fundamental and organic. It would be just as dangerous to its stability for the judicial department to override the others as for the executive or legislative department to do so. Hence, while the right of the judiciary to pass upon the constitutionality of laws is undoubted, it has that right simply as an incident to its protection of private rights. It has not that right as a mere means of settling abstract questions; and even in the enforcement of private rights, it has not the power to interfere with the discretion vested in the other departments or with the exercise of the political powers of those departments. It seems to me that it is a dangerous encroachment upon the prerogatives of the other departments of government if the judiciary be entrusted to exercise the power of interfering with the holding of an election in a State. If the supervisor of one county can be enjoined from the performance of the duties imposed upon him by the election laws of the State from whom he holds his commission, those of the other counties can be also.

Thus a single citizen in each county (and in the case at bar he is not even a qualified voter) can enjoin an election throughout the entire State, and thus deprive thousands of their right to vote. If a court has power to do this, free elections are at an end. If elections are improperly held, there are appropriate means provided by law for questioning their results and remedying wrongs without the exercise of this dangerous power by the courts. A candidate who has been defeated may contest; a voter whose right to register has been denied may proceed to compel the enforcement of that right; and these privileges give what the legislature deems sufficient protection to the injured; but, in my judgment, one citizen can not, under pretence of righting his own wrongs, disfranchise others. I do not think that a court has jurisdiction to interfere by injunction or otherwise with the enforcement of laws by officers holding and deriving their powers from these laws; certainly not, to the extent in which it is attempted to be done by this bill. In arriving at this conclusion, I have not considered the question whether or not the registration laws of South Carolina violate the Federal Constitution or laws. I prefer to rest my opinion upon the ground of the inde-

pendence of the different departments of government; upon the impolicy of interference by the courts in questions which will result in dragging them constantly into the arena of party politics, and upon the general principle that each department of the government and each officer thereof, high or low, has the right to administer, according to his best judgment, the duties imposed upon him by the laws creating his office. As illustrating these general principles, I refer to the following decisions:

Mississippi v. *Johnson*, 4 Wall., 4
Gaines v. *Thompson*, 7 Wall., 347.
Louisiana v. *Jumel*, 107 U. S., 711.
Hagood v. *Southern*, 117 U. S., 52.
Ayers in re, 123 U. S., 443.
In re Sawyer, 124 U. S., 209.

It is useless to cite the many cases which bear on the question arising in this case and cited so profusely at the bar.

In the case of the State of *Mississippi* v. *Andrew Johnson*, which was a bill to enjoin the President of the United States and the Military Commandant of the Military District of Mississippi from carrying into effect certain provisions of the Reconstruction Acts of 1867, the Supreme Court said that "an attempt on the part of the judicial department of the government to enforce the performance of (executive and political) duties of the president might be justly characterized in the language of Chief Justice Marshall as an absurd and excessive extravagance."

"It is true," says the court, "that in the instance before us the interposition of the court is not sought to enforce action by the Executive under Constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to preceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of Executive discretion."

"The Congress is the Legislative department of the government; the President is the Executive department. Neither can be restrained in its action by the Judicial department; though the acts of both, when performed, are in proper cases, subject to its cognizance."

This language of the Supreme Court is quoted to show that the court was at pains to distinguish between acts of public officers which were political and executive, and those which were merly ministerial; and between duties of officers as officers, and those which belong to persons as mere citizens.

These distinctions are carefully adhered to by the Supreme Court in the subsequent decisions which I have cited. I do not think it necessary to point out how particularly and carefully it has done so in those cases.

In the one at bar, the person enjoined from the performance of duties was an officer of the executive department of the government, and he was enjoined as an officer, and not as a citizen, from performing political functions.

The duties which he was discharging were political, exclusively political, and did not appertain to him as a private citizen. I think the teaching of the cases I have cited is clear, that a court can not by injunction prohibit a public officer generally from discharging political duties imposed by law. If the law be vicious, the remedy must be sought elsewhere than in the courts. Probably the homely way of getting rid of a bad law recommended by General Grant, is the best, viz: by enforcing it rigidly.

I do not think that the fact was so; but let it be admited for the sake of argument, that the duties of the registration officer who was enjoined in this case, were entirely ministerial, affording no room for discretion; yet they were strictly political. They dealt with that prime subject in a republic—the elective franchise. The duties were prescribed by legislation, and the performance of them was an executive act. For the court to enjoin an executive officer generally from discharging those duties was for the judiciary to invade the province of both the other two independent departments at once. It was, so far as the injunction operated, a nullification of legislation, and a prohibition of the performance of important executive duties.

So far as the rights of the individual complainant in the bill were concerned, it may have been competent for the court to grant individual relief. The Supreme Court of the United States, the other day, granted relief from the payment of an income tax to the individual com-

plainant in the suit before it; but it went no farther. On the authority of *Mississippi* v. *Johnson*, *supra*, we may assume that it would not have entertained a bill for enjoining internal revenue officers of the government from collecting income taxes generally. The judicial power covered the right to grant individual relief, but did not extend to the general power of repealing the law imposing the tax as to the entire public.

I repeat that in the case at bar it may have been competent for the court to grant individual relief. But the bill asked more. It asked similar relief for all citizens of the county situated like the complainant. It practically asked relief for a numerous political party forming a portion of that people to whom the legislature was solely responsible for its laws, and to whom alone the genius of our institutions makes the legislature responsible. Moreover, it brought the court into immediate and active contact with party contestation. It made the court a controlling factor in party strife. I can imagine nothing more pernicious than a direct participation by the judiciary, by judicial action, in the politics of the people. The bill asked practically that the process of registration under the laws of the State should be suspended in an entire county during the pleasure of the court, and that all the citizens of a county, not then registered as voters, should be denied the right of suffrage during that pleasure. It seems to me that the mere statement of this view of the case shows that the injunction was improvidently granted.

I think the bill should be dismissed.

Office Supreme Court U. S.
FILED.
OCT 8 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

LAWRENCE P. MILLS,
Complainant, Appellant,
vs.
W. BRIGGS GREEN,
Defendant, Appellee.

No. 732.

MOTION TO DISMISS APPEAL.

WM. A. BARBER,
Attorney-General of South Carolina,
for Defendant, Appellee.

EDWARD McCRADY,
GEO. S. MOWER,
Of Counsel.

JOHN F. SHEA & CO., WASHINGTON.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 732.

LAWRENCE P. MILLS, Complainant, Appellant,

vs.

W. BRIGGS GREEN, Defendant, Appellee.

MOTION TO DISMISS APPEAL

Now comes the defendant, appellee, by his counsel, and moves the court to dismiss the appeal in above-entitled cause upon the following grounds, to wit:

1. That the judgment of the Circuit Court of Appeals, reversing the interlocutory order of injunction, is conclusive and there is no right of appeal allowed from it to the Supreme Court.

2. That there is now no actual controversy involving real and substantial rights between the parties to the record, and no subject-matter upon which the judgment of this court can operate.

WM. A. BARBER,
Attorney-General of South Carolina for Defendant, Appellee.

EDWARD McCRADY,
GEO. S. MOWER,
Of Counsel.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 732.

LAWRENCE P. MILLS, Complainant, Appellant,
vs.
W. BRIGGS GREEN, Defendant, Appellee.

Notice of motion to dismiss appeal.

To Messrs. Obear & Douglass,
Counsel for Plaintiff, Appellant:

Please take notice that on Monday, the 28th day of October, A. D. 1895, at the opening of the court, or as soon thereafter as counsel can be heard, the above motion to dismiss the appeal will be submitted to the United States Supreme Court, at Washington, D. C., for the decision of the said court thereon. Annexed hereto is a copy of the brief of argument to be submitted with said motion in support thereof.

WM. A. BARBER,
Attorney-General of South Carolina, for Defendant, Appellee.

EDWARD McCRADY,
GEO. S. MOWER,
Of Counsel.

ABSTRACT OF CASE.

This cause is brought up to this court by appeal from the Circuit Court of Appeals.

The question arose thus, to wit: The suit was brought on the equity side of the Circuit Court of the United States, for the District of South Carolina, by Lawrence P. Mills against W. Briggs Green, individually and as Supervisor of Registration for Richland County, South Carolina.

The cause of action stated in the bill of complaint, briefly, is that the appellant is a male citizen of the United States, and an elector of the State of South Carolina, possessing all the qualifications of an elector of the State, excepting that he has not been registered according to the terms of certain acts of the State which he alleges to be unconstitutional and void.

That the General Assembly of the State, on the 24th day of December, 1894, passed an act providing for the election of members of a Constitutional Convention to be held on the third Tuesday in August, 1895, which convention was to assemble on the second Tuesday in September, 1895.

That, by the requirements of the act providing for the election of members to the said convention, all electors were to be registered as therein prescribed; and upon the completion of the said registration (which the bill alleges was to be on the first day of July, 1894), the supervisors of registration were required "to furnish the managers at each precinct with one of the registration books for such precinct, and no elector should be entitled to vote whose name is not registered" as therein provided.

That the complainant has failed to register as required by the said act of 1894, because, although he had made repeated and persistent efforts to become registered, he found himself unable to comply with the unreasonable, unnecessary, and burdensome rules, regulations, and restrictions prescribed by said unconstitutional registration laws as condition precedent to his right to register.

The purpose and scope of the complaint is thus stated in the last clause:

14. "That your orator is desirous of voting for delegates to the aforesaid Constitutional Convention at the election prescribed by the act of 1894 for the purpose; that the paper writings purporting to be books of registration, now in the hands of the said defendant, do not and will not contain the name of your orator as a registered voter for the reasons hereinbefore stated; that your orator and others like circumstanced with him will not be permitted to vote at the said special election by the managers thereof, unless their names be found upon the books of registration, and they can produce the registration certificate hereinbefore mentioned; that if the said defendant be permitted to continue the aforesaid illegal, partial, and void registration, and be allowed to turn over to the managers of election of the aforesaid County of Richland (when appointed), said paper writings, purporting to be books of registration for the several precincts in the said county, your orator will be deprived of his right to vote at said election, and grievous and irreparable wrong and damage will be done to your orator and a large class of citizens like circumstanced with him, which can be prevented only by the interposition of this court by way of restraining the said defendant from the performance of any of the acts hereinbefore referred to."

And the prayer of the complaint was:

"To the end, therefore, that your orator may have full, perfect and sufficient relief in the premises. May it please your honors to grant unto your orator a writ of injunction restraining and enjoining the said defendant individually, and as supervisor of registration, from the performance of any of the acts hereinbefore complained of, and that your orator may have such other and further relief in the premises as may be just and reasonable."

A restraining order was granted on the 16th of April, 1895, by his Honor Nathan Goff, Circuit Court Judge, and the defendant was required to show cause on the 2d of May why

the same should not be continued until the final hearing and determination of the cause.

On the hearing of the return, his Honor Judge Goff, on the 8th of May, continued the restraining order until the final determination of the issues involved in the case, or until the further order of the court.

From this interlocutory order the defendant, Green, appealed to the Circuit Court of Appeals under the provisions of the seventh section of the act establishing that court; and upon this appeal the Circuit Court of Appeals, on the 11th day of June, 1895, reversed the order of his Honor Judge Goff and set aside the injunction granted by him. This is an appeal from the judgment of the Circuit Court of Appeals to the Supreme Court. The motion is to dismiss this appeal.

GROUNDS OF MOTION.

The appellee submits that the appeal should be dismissed.

1. Because under the act of March 3, 1891, as amended February 18, 1895, the judgment of the Circuit Court of Appeals reversing the interlocutory order of injunction is conclusive, and there is no right of appeal allowed from it to the Supreme Court.

2. Because there is now no actual controversy involving real and substantial rights between the parties to the record, and no subject-matter upon which the judgment of this court can operate.

BRIEF OF ARGUMENT.

I.

No appeal is allowed by the act of March 3, 1895, as amended by the act of February 18, 1895, from the judgment of the Circuit Court of Appeals to the Supreme Court, reversing an interlocutory order of injunction granted by a circuit or district court.

Section 7 of the act as amended is as follows:

"That where, upon a hearing in equity in a district court, or a circuit court, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or, an application to dissolve an injunction, shall be refused in a case in which an appeal from a final decree may be taken under the provisions of this act to the Circuit Court of Appeals, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve an injunction to the Circuit Court of Appeals; *Provided*, that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed, unless otherwise ordered by that court during the pendency of such appeal; *And provided further*, that the court below may, in its discretion, require as a condition of the appeal an additional injunction bond."

This section is independent of the other sections of the act, and excepts the special cases therein enumerated from the general principle that no appeal lies from a temporary or an interlocutory order of injunction. It is permissory in its nature and must be strictly construed. An appeal from an interlocutory order of a circuit or district court to the Circuit Court of Appeals is permitted, but it is not provided that such orders shall be reviewable by appeal in the Supreme Court. There is nothing in the act giving this court jurisdiction to review a decision, either granting or refusing an interlocutory order. The words of Section 7, show clearly the intention of Congress to make the judgment of the Circuit Court of Appeals conclusive in such matters. The object of allowing an appeal to that court evidently was to expedite, by appeal, a final determination of the validity of interlocutory orders of injunction granted by the circuit or district courts; and, to hold that the judgment of the Circuit Court of Appeals is not conclusive would be to defeat, in a great measure, that very object.

II.

There is now no actual controversy involving real or substantial rights between the parties to the record, and there is no practical legal question involved.

From the statement of the record, it appears that the purpose and scope of the bill was to enjoin the action of the supervisor of registration under the act of Assembly providing for an election of members to a Constitutional Convention, which election was to take place on the third Tuesday (the 20th) of August last.

The temporary order enjoining the defendant, as the plaintiff prayed, was set aside by the Circuit Court of Appeals and the supervisior was left to carry out the provisions of the law and to furnish the managers of election with the registration books as required by the act.

The purpose of the bill was to secure to the appellant the right to vote at an election which was to be held on the 20th of August. That time has passed, and the appellant was either allowed to vote at the election or he was not. If allowed to vote, his cause of action is gone. If not allowed to vote, no action by this court can now secure him the opportunity of doing so. In neither case is there any longer a subject-matter upon which the appeal can operate.

In support of this position we refer to the following decisions:

Chicago & Vincennes R. R. Co. vs. Fosdick, 106 U. S. 47.

An appeal may lie from a decree in an equity cause, notwithstanding it is merely in execution of a prior decree in the same suit for the purpose of correcting errors which originate in it; but when such decrees are dependent upon the decree to execute which they were rendered, they are vacated by its reversal; *in which case the appeal which brings them into review will be dismissed for want of a subject-matter on which to operate.*

In the case of *San Mateo County vs. Southern Pacific R. R. Co., 116 U. S. 138:*

"The court dismisses the writ on the ground that there is no longer an existing cause of action."

In that of *Elwell vs. Fosdick, 134 U. S. 500.*

An appeal was dismissed on the ground that a release of errors had been executed by a trustee which was held to bind the *cestuis que trust* and put an end to the cause.

The subject is reviewed in the case of *Little* vs. *Bowers, 134 U. S., 547*, in which Mr. Justice Lamar, delivering the opinion of the court, says:

"It is well settled that when there is no actual controversy involving real and substantial rights between the parties to the record, the case will be dismissed. In *Lord* vs. *Veazie, 8th Howard, 251*, a writ of error was dismissed by this court where it appeared, by affidavits and other evidence of persons not parties to this suit, that there was no real controversy between the plaintiff and the defendant, but that the suit was instituted to procure the opinion of this court upon a question of law, in the decision of which they had a common interest, opposed to that of other persons who were not parties to the suit and had no knowledge of its pendency in the Circuit Court. * * * In *Cleland* vs. *Chamberlin, 1st Black, 419*, the rule laid down in *Lord* vs. *Veazie, supra*, was adhered to and held applicable to a case in which it appeared that the appellant had purchased and taken an assignment of all the appellee's interests in the decree appealed from, and the appeal was dismissed. * * * In *San Mateo county* vs. *Southern Pacific R. R. Co., 116 U. S., 138*, a writ of error was dismissed where it appeared that the taxes assessed against the company had been paid to the county after the suit had been commenced, the court resting its judgment upon the reason that there is no longer an existing cause of action in favor of the county against the railroad company."

The same principle is followed in the State of South Carolina.

In the case of State *vs.* Gathers, 15 S. C., 370, the Supreme Court declares the rule as follows:

"This court cannot consider merely speculative questions, and give opinions upon disputed points of law. Our duty is to pronounce practical judgments, to settle and determine the rights of parties. There must be an actual existing case to call into exercise the judgment of the court."

Again in Cantwell *vs.* Williams, 35 S. C., 602, the court says:

"It has also been long settled law in this State that this court cannot consider merely speculative questions, and give judgment upon disputed points of law. Our duty is to pronounce practical judgments, to settle and determine the rights of parties. *Ex parte Percival, 6 Rich. 150; State vs. Gathers, 15 S. C., 372. See also U. S. vs. Boutwell, 17 Wall, 607.* It is evident that there is no longer any practical question in this case, and before the court, and that the court could not therefore hear and determine the merits, only speculative questions being involved."

In some cases above quoted, the fact that there was no longer any subject-matter upon which the appeal could operate was made to appear by affidavits or other evidence dehors the record; but in this case the fact appears upon the face of the record itself. The court is asked (reversing the decision of the Circuit Court of Appeals below) to secure the appellant the right to do something on a day and at a time now past. It is now impossible to grant the relief sought. The court is asked to express its opinion upon an issue which no longer exists, and upon which its judgment would be purely speculative.

WILLIAM A. BARBER,
Attorney-General of South Carolina,
Counsel for Defendant, Appellee.

EDWARD McCRADY,
GEORGE S. MOWER,
Of Counsel.

Office Supreme Court, U. S.
FILED.
OCT 25 1895
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1895.

LAWRENCE P. MILLS,
Complainant, Appellant,
vs.
W. BRIGGS GREEN,
Defendant, Appellee.

No. 732.

Brief submitted in behalf of Lawrence P. Mills, Complainant, Appellant, in opposition to the Motion to dismiss Appeal.

HENRY N. OBEAR,
Attorney for Appellant.

JOHN F. SHEA, PRINTER, WASHINGTON.

Supreme Court of the United States.

OCTOBER TERM, 1895.

LAWRENCE P. MILLS,
Complainant, Appellant,
vs.
W. BRIGGS GREEN,
Defendant, Appellee.

No. 732.

Brief submitted in behalf of Lawrence P. Mills, Complainant, Appellant, in opposition to the motion to dismiss appeal.

ABSTRACT OF THE CASE.

This cause was brought on the equity side of the Circuit Court of the United States for the District of South Carolina by Lawrence P. Mills against W. Briggs Green individually and as supervisor of registration for Richland County, South Carolina, for the purpose of restraining the defendant from performing the alleged duties of an alleged office, upon the ground that such office was created, and such duties imposed by a system of enactments known as the Registration Laws of South Carolina; which enactments are in all respects unconstitutional and void, within the purview of both the State and United States Constitutions; and that the acts of

the defendant in pursuance of such unconstitutional enactments, and which were sought to be restrained, would work irreparable damage to the complainant, and in particular would unlawfully deprive him of the right to vote for delegates to a constitutional convention, which at the time of the filing of the bill was about to be held in and for said State of South Carolina.

The bill sets forth that appellant is a male citizen of the United States, and a duly and constitutionally qualified elector of the State of South Carolina, without any such exception as is stated by appellee in his "Abstract of the Case." Appellant has not been registered, but he denies that registration is among the qualifications of an elector of said State.

The bill sets forth the provisions of the several registration enactments of force in said State (and not those of the Act of 1894 only, as intimated in appellee's "Abstract of Case") showing how they operate to perpetually disfranchise certain classes of citizens, and detailing the burdensome rules, regulations, and restrictions imposed upon those who seek to cast their ballots in said State; and farther sets forth that among the duties wherewith the supervisors of registration are charged is the duty of furnishing to the managers of election at the several election precincts with one of the registration books for such precinct at each election; and that no elector shall be allowed to vote whose name is not registered in said book, as provided in said unconstitutional enactments.

The bill further sets forth the particulars wherein these enactments violate the United States' and the State Constitution; that although complainant had made repeated and persistent efforts to be registered, he had been unable to do so; and that defendant intended to carry out the provisions of said unconstitutional enactments, and particularly to deliver a registration book to the managers of election for the precinct where appellant should vote without his name being

thereon, which would result in depriving him of his ballot, to prevent which an injunction was prayed.

A restraining order was granted on the 16th of April, 1895, by his Honor Nathan Goff, Circuit Court Judge, and the defendant was required to show cause on the 2d of May why the same should not be continued until the final hearing and determination of the cause.

On the hearing of the return, his Honor Judge Goff, on the 8th of May, continued the restraining order until the final determination of the issues involved in the case, or until the further order of the court.

From this interlocutory order the defendant, Green, appealed to the Circuit Court of Appeals under the provisions of the seventh section of the act establishing that court; and upon this appeal the Circuit Court of Appeals, on the 11th day of June, 1895, reversed the order of his Honor Judge Goff, set aside the injunction granted by him, *and directed that the bill be dismissed.*

Appellee must have forgotten about this direction, or he would surely have inserted so important a matter in his abstract.

This appeal is from that judgment of the Circuit Court of of Appeals.

BRIEF OF ARGUMENT.

I.

In opposition to the first ground of motion:

1. Were this appeal *only* from the judgment of the Circuit Court of Appeals reversing an interlocutory order of injunction; were the bill still upon the docket, and the only effect of the order of reversal that complainant could not be allowed an injunction *pendente lite*, there would be force in appellee's proposition. But such is not the case. This is an appeal

from the judgment of the Circuit Court of Appeals, reversing the order of injunction, *and directing that the bill be dismissed*, a very different condition from that assumed by appellee.

Such a decree, as has been rendered by the Circuit Court of Appeals here, is *final*, for nothing was left to be done but to enforce their decree by a formal order dismissing the bill. No discretion whatever was left in the Circuit Court.

"Appeals will lie, as has been frequently held, when nothing remains to be done except to enforce and give effect to what has been decreed, but until all the rights of the parties have been finally passed upon and settled, this cannot be the condition of the cause. Nothing must be left below when an appeal is taken but to execute the decree." *Crosby* vs. *Buchanan*, 23 *Wall*, 453.

When the Circuit Court of Appeals directed the bill to be dismissed, they finally passed upon and settled all the rights of the parties. *Cela va sans dire.*

"In our opinion the decree, as entered, is a final decree within the meaning of Sec. 692 of the Revised Statutes regulating appeals to this court. The whole purpose of the suit [defence] has been accomplished. * * * The litigation of the parties as to the merits of the case is terminated and nothing now remains to be done but to carry what has been decreed into execution. Such a decree has always been held to be final for the purpose of an appeal." *Winthrop Iron Co.* vs. *Meeker*, 109 *U. S.*, 183.

Again: An appeal may be taken from a decree—

"when the rights of the parties have all been settled and nothing remains to be done by the court but to make the sale and pay out the proceeds." *Railroad Company* vs. *Swasey*, 23 *Wall*, 405.

"A judgment of reversal is only final when it also enters or directs the entry of a judgment which disposes of the case." *Smith* vs. *Adams*, 130 *U. S.*, 177.

Clearly the judgment of reversal here also directed the entry of a judgment which disposed of the case.

Unless, then, this case falls within the class of cases wherein the Circuit Court of Appeals is expressly made the court of last resort by the statute creating that court, it is appealable. If appealable, the only tribunal superior to that *forum* is this court. But only "cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States"—"cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty," are made final in the Circuit Court of Appeals; and this case, manifestly, is not within any of these classes.

Again: The Act of March 3, 1891, provides that in cases not made final there shall, of right, be an appeal to this court; and Sec. 699, Revised Statutes, prescribes that "in any case brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States," an appeal shall be allowed without regard to the sum or value in dispute. We urge that this case is within that category and the limitation of appeal to this court from the Circuit Court of Appeals to cases "where the matter in controversy shall exceed $1,000, besides costs," has no application here.

2. Another view of this question may be presented.

The paragraph in Sec. 6 of the Act of March 3, 1891, which provides for an appeal to this court from the Circuit Court of Appeals is in these words:

> "In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed $1,000, besides costs."

We invite the attention of the court to the force of the words "of right" in said paragraph. Why are they there?

from the judgment of the Circuit Court of Appeals, reversing the order of injunction, *and directing that the bill be dismissed*, a very different condition from that assumed by appellee.

Such a decree, as has been rendered by the Circuit Court of Appeals here, is *final*, for nothing was left to be done but to enforce their decree by a formal order dismissing the bill. No discretion whatever was left in the Circuit Court.

"Appeals will lie, as has been frequently held, when nothing remains to be done except to enforce and give effect to what has been decreed, but until all the rights of the parties have been finally passed upon and settled, this cannot be the condition of the cause. Nothing must be left below when an appeal is taken but to execute the decree." *Crosby* vs. *Buchanan*, *23 Wall*, *453*.

When the Circuit Court of Appeals directed the bill to be dismissed, they finally passed upon and settled all the rights of the parties. *Cela va sans dire*.

"In our opinion the decree, as entered, is a final decree within the meaning of Sec. 692 of the Revised Statutes regulating appeals to this court. The whole purpose of the suit [defence] has been accomplished. * * * The litigation of the parties as to the merits of the case is terminated and nothing now remains to be done but to carry what has been decreed into execution. Such a decree has always been held to be final for the purpose of an appeal." *Winthrop Iron Co.* vs. *Meeker*, *109 U. S.*, *183*.

Again: An appeal may be taken from a decree—

"when the rights of the parties have all been settled and nothing remains to be done by the court but to make the sale and pay out the proceeds." *Railroad Company* vs. *Swasey*, *23 Wall*, *405*.

"A judgment of reversal is only final when it also enters or directs the entry of a judgment which disposes of the case." *Smith* vs. *Adams*, *130 U. S.*, *177*.

Clearly the judgment of reversal here also directed the entry of a judgment which disposed of the case.

Unless, then, this case falls within the class of cases wherein the Circuit Court of Appeals is expressly made the court of last resort by the statute creating that court, it is appealable. If appealable, the only tribunal superior to that *forum* is this court. But only "cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States"—"cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty," are made final in the Circuit Court of Appeals; and this case, manifestly, is not within any of these classes.

Again: The Act of March 3, 1891, provides that in cases not made final there shall, of right, be an appeal to this court; and Sec. 699, Revised Statutes, prescribes that "in any case brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States," an appeal shall be allowed without regard to the sum or value in dispute. We urge that this case is within that category and the limitation of appeal to this court from the Circuit Court of Appeals to cases "where the matter in controversy shall exceed $1,000, besides costs," has no application here.

2. Another view of this question may be presented.

The paragraph in Sec. 6 of the Act of March 3, 1891, which provides for an appeal to this court from the Circuit Court of Appeals is in these words:

> "In all cases not hereinbefore, in this section, made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed $1,000, besides costs."

We invite the attention of the court to the force of the words "of right" in said paragraph. Why are they there?

Clearly they import into the paragraph the meaning that where the matter in controversy shall exceed $1,000, besides costs, the losing party has his appeal, *of right*. He need not apply for an *allowance* of appeal. The judges have no power or discretion to refuse him this remedy—it is his, *of right*. If these words do not mean this, then are they the merest surplusage.

What, then, as to cases where the matter in controversy is below $1,000 in value, or cases like this, where the matter in controversy, though of exceeding value, is difficult to estimate in dollars and cents? Are appeals to this court forbidden in such instances? The statute does not say so. The manifest construction of said Sec. 6 is this: In certain enumerated classes of suits the determination of the Circuit Court of Appeals is expressly made final. It results that in all the other classes of actions its determination is *not final*. If not made final it can be appealed from and such appeal can only be to this court. This much results *ex vi termini;* and there was no necessity to insert a paragraph providing for appeals to this court from the Circuit Court of Appeals in cases not made final in the latter tribunal. But in ordinary practice and without statutory intervention such appeals would, in all cases, be subject to *allowance* by some proper judicial officer, and the power to allow must include the power to refuse. In order to remove appeals in cases where the matter in controversy shall exceed $1,000, besides costs, beyond the danger of refusal, this paragraph was inserted providing that in such cases the appeal shall be "of right;" and leaving all other cases not made final in the Circuit Court of Appeals with a right of appeal to this court, if such appeal be duly allowed by the proper judge, the appeal in such cases being not "of right," but *ex gratia*.

3. The assignment of errors assails the jurisdiction of the Circuit Court of Appeals; and we believe that at the hearing

we can satisfy this court that that intermediate appellate tribunal was wholly without authority to interfere at all in this case; and that its decree is *coram non judice*. This question in the cause, were there nothing else, would remove this appeal from being one upon the matter of the propriety of granting an interlocutory injunction.

We submit, then, that the argument of appellee, based, as it is, entirely upon the assumption that this appeal merely calls in question the propriety of the reversal by the court below of the order granting an interlocutory injunction, falls, when—a clearer light being thrown upon the cause—it is seen that the court below *dismissed* the bill though without any jurisdiction to try the cause.

II.

The second ground upon which the appellee has based his motion, is the assertion that there is no longer a subject-matter upon which the appeal can operate.

While it appears from the reports that in a proper case, and upon a proper showing, an appeal or writ of error will be dismissed, where, after appeal taken or writ of error sued out, there ceases to be an actual controversy between the parties to the record, we submit that in this case there has been no proper showing, and we shall urge that this is not a proper case for the invocation of that rule.

1. Ordinarily a case stands, so far as the application thereto of legal rules is concerned, on the facts as they existed at the inception of the action. There is presumed to be no change in the subject-matters of the litigation. But if a change has taken place, and it is desired to bring the altered condition of affairs to the attention of the court, it should be done through some duly authorized and recognized procedure—by supplemental pleading, by affidavit, by testimony adduced by leave of the court, or the like. In this case there is nothing of the

kind. It may be that the election which was to be held on the 20th of August last, has been held, but there is nothing to show that as matter of fact it has been; and we submit that this court cannot take judicial notice of the matter.

2. But conceding that the election has taken place, it does not follow that the appeal should be dismissed. The complainant may not have been allowed to vote because not registered; if that be the case, it exists by reason of the wrongful conduct of appellee; and we have yet to find a case where the unlawful conduct of the defendant in a suit, has, as its legal result, procured him the substantial advantage of dismissal of the cause.

The authorities cited by the appellee will sustain no such proposition. The first is *Chicago and Vincennes Railroad Co.*, vs. *Fosdick*, *106 U. S.*, *47*, where the citation is from the *syllabus*. In the body of the opinion (pp. 83, 84) the court says:

"The petition of the purchasers [of the railroad], filed February 17, 1877, in which they also asked for the immediate discharge and payment of their bid, had been referred to the master, whose report, subsequently filed, was confirmed by the decretal order of April 12, 1877, by which he was directed, on the surrender to him of two thousand three hundred and twenty-eight first mortgage, Illinois division bonds of the defendant railroad company, to execute and deliver to the purchaser a deed of the property sold, and thereupon the receiver was directed to let them into possession. On April 16, 1877, the master having reported the execution of the decree of April 12, by the delivery of the deed and the acceptance of the bonds, a further decree was entered, approving and confirming the same. These are the two decrees first named in the prayer for the present appeal. * * *

"It is then urged by the appellees that the decrees in question, having simply followed the directions of previous decrees, originated no error and that the only alternative is to affirm them. But the decrees involved in this appeal now under consideration are dependent upon the decree of foreclosure and

sale; and the latter, having been reversed, the decrees in question are left without support and fall of themselves by reason of that reversal, vitiated by the common error. As they are already annulled by operation of law, the subject matter of the appeal is withdrawn and the appeal itself must be dismissed for lack of anything on which it can operate."

How decrees "already annulled" could be made the subject of appeal, it is difficult to conceive; and it is equally difficult to conceive how this citation supports appellee's position.

The next case referred to by the Attorney General of South Carolina is *San Mateo County* vs. *Southern Pacific Railroad Co., 116 U. S., 138.* And this court say (p. 141):

"As this [*amount*] is more than the entire sum estimated by the counsel for the plaintiff to be due, it is clear that the debt for which the suit was brought has been unconditionally paid and satisfied.

"As to the objection that this was, by agreement of parties, made a test case and many others are depending upon its adjudication, it is sufficient to say that both sides agree that the suit of the county Santa Clara against the same company presents all the questions that are in this case and that the parties have stipulated that this need not be taken up for decision until that is heard. The interests of the State, therefore, will be as well protected by the determination of that case as of this. For the reason that there is no longer any existing cause of action in favor of the county against the railroad company, this writ of error is dismissed."

Of course if, pending the appeal, appellant *voluntarily* pays the debt which is the subject matter of the litigation, neither side has anything to complain of if the appeal be dismissed. And so, in *Little* vs. *Bowers, 134 U. S., 547*, also cited by Mr. Barber, it is decided:

"The *voluntary* [italics ours] payment of a municipal tax while a suit is pending in this court between the party taxed and the officers of the corporation to determine whether it was

legally assessed leaves no existing cause of action, and requires the dismissal of the writ of error."

So in *Cleland* vs. *Chamberlin*, *1 Black*, *419*, appellant had purchased all appellee's interest in the decree appealed from and, of course, the appeal was dismissed.

In these cases we have the *voluntary payment of the debt*; the *voluntary payment of a tax*; the *voluntary purchase of appellee's interest in the decree appealed* from; in *Elwell* vs. *Fosdick*, *134 U. S.*, *500*, the *voluntary release of errors*; but nowhere do we find that *appellee* can procure the dismissal of a suit against him by doing the thing against which the suit is directed. Had appellee *voluntarily registered the appellant*, some analogy with the cases cited could be perceived, but as it is, we fail to find the application of these decisions.

If victorious, it may be that our victory will be barren. But if our appeal is dismissed for the reason suggested by appellee, it would be perfectly proper to dismiss a suit at law upon the ground that defendant had placed his property beyond the reach of legal process, and no recovery against him could be collected.

3. The law declares that the fact that defendant has already accomplished the act sought to be enjoined, does not deprive the aggrieved party of his right of appeal.

"If under the practice of a State, an appeal lies from an order refusing a preliminary injunction, the fact that the thing which it is sought to enjoin may have already been accomplished will not deprive the party aggrieved of his right of appeal, and the appellate tribunal may still in its discretion determine the question whether an interlocutory injunction should have been granted." *2 High on Inj. §1707.*

Again:

"The right of appeal is not lost, however, because the act sought to be enjoined has already been done." *2 Spelling on Extraordinary Relief, §1146, p. 925.*

Again:

"The right of appeal from the denial of a preliminary injunction is not taken away by the fact that the act sought to be enjoined may possibly have been already accomplished and in some respects, therefore, an order of reversal might be inefficacious. The court may on such an appeal hear and adjudge the right upon which a preliminary injunction should have been granted." *Terhune* vs. *Midland Railroad Co., 36 N. J. Equity Reps., 318.*

Note also the following decision:

"But it is said, and indeed conceded, that the road enjoined has been actually built since the dissolution of the injunction. It is therefore urged that the injunction will be ineffectual. It is none the less the duty of this court to reverse the order dissolving it. And it will be thereupon the duty of the court below to exercise its authority as far as it can towards repairing the wrong which its error has permitted." *Town of Platteville* vs. *Galena, etc., Railroad Co., 43 Wis. Rep., 506.*

4. Our appeal calls in question the jurisdiction of the Circuit Court of Appeals to hear this cause. "Where the jurisdiction of the court below is assailed, the motion to dismiss will not be entertained. Such a question is a proper ground for appeal and for argument when the case is reached in the regular call of the docket (Nelson *vs.* Leland, 22 How., 48)." *Phillips Supreme Court Practice, p. 262.*

5. The deliverance of this court in *San Mateo County* vs. *Southern Pacific Railroad Co.*, hereinbefore quoted, plainly implies that where a cause is before the court to test important legal principles, it will be retained and heard, even though any practical benefit from the suit, to either side, no longer exists; and in *Terhune* vs. *Midland Railroad Co., supra*, it is decided, that the court "may hear and adjudge the right upon which a preliminary injunction should have been granted." And this court will not close its eyes to the fact (apparent from the record) that one of the objects of this

suit is to test the validity of the registration enactments of South Carolina; and to determine whether in this free land, a system can be lawfully devised whereby it becomes possible for a faction to effect the permanent disfranchisement of a large class of the citizens of that State.

Respectfully submitted.

HENRY N. OBEAR,

Attorney for Appellant.